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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

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3 NICHOLAS MAGALIOS,

4 Plaintiff,

5 V.

19 CV 6188 (CS)

6 TRIAL

7 C.O. MATHEW PERALTA,
8 C.O. TIMOTHY BAILEY,
9 C.O. EDWARD BLOUNT,

Defendants.

10 -----x

11 United States Courthouse
12 White Plains, New York
13 April 28, 2021

14
15 Before: THE HONORABLE CATHY SEIBEL, District Judge

16
17 APPEARANCES

18 SIVIN & MILLER, LLP
19 Attorneys for Plaintiff
20 GLENN D. MILLER

21 LETITIA JAMES
22 Attorney General for the State of New York
23 JESSICA ACOSTA-PETTYJOHN
24 BRUCE J. TURKLE
25 Assistant Attorneys General

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1 (Trial resumed)

2 (In open court; jury not present)

3 THE COURT: Good morning, everyone. You can all have
4 a seat.

5 MR. MILLER: Good morning, your Honor.

6 MS. ACOSTA-PETTYJOHN: Good morning, your Honor.

7 THE COURT: So Mr. Miller sent us an e-mail last
8 night. I guess I should read it into the record, and then I'll
9 ask where we are on the state of play. It's addressed to my
10 law clerk. It says:

11 "As instructed, here is an update on the Lisa Tibaldi
12 issue. Ms. Acosta-Pettyjohn, Mr. Turkle and I spoke before
13 leaving the building today. I informed them that, because of
14 the testimony of Alexander Hall, which covers the same portion
15 of the events of September 3rd, and the hostility of Tibaldi
16 toward the plaintiff, we have decided not to call her as a
17 witness in our case. Counsel informed me that they would like
18 to call her as their witness. I informed them that I would ask
19 Ms. Sinise to contact Tibaldi to let her know that she will be
20 called as a witness for the defense.

21 "Since that discussion, Tibaldi telephoned my
22 partner, Ed Sivin, and left a voice mail message asking that he
23 call her back. Mr. Sivin returned the call, whereupon Tibaldi
24 expressed her annoyance at not being called to testify at the
25 time set forth in the subpoena and again expressed her

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1 reluctance to testify at all during these proceedings. At that
2 point, Mr. Sivin did not know that I had decided not to call
3 Tibaldi on my case.

4 "Upon learning of this conversation from Mr. Sivin, I
5 immediately telephoned Ms. Acosta-Pettyjohn to provide her with
6 this update. Ms. Acosta-Pettyjohn has continued to express an
7 interest in calling Tibaldi as a witness. I provided her with
8 Tibaldi's phone number and suggested that she serve Tibaldi
9 with her own subpoena as I doubt that Tibaldi is required to
10 appear for the defense on plaintiff's subpoena.

11 "Mr. Sivin has again reached out to Tibaldi and left
12 a message on her voice mail stating that plaintiff will not be
13 calling her as a witness, but that defense counsel wishes to
14 call her and likely will be contacting her by telephone.

15 "At this point, this e-mail is just another heads up
16 for the Court; however, I would like to address this issue in
17 the morning, once I get a better sense from defense counsel
18 what their intentions are."

19 All right. And that was sent last evening. Any news
20 since?

21 MS. ACOSTA-PETTYJOHN: Yes. I was beginning to tell
22 Mr. Miller Ms. Tibaldi called me late last night. We spoke for
23 about 10 minutes. She does understand that plaintiff's counsel
24 is no longer calling her, but she does understand that we would
25 like her to testify for us. She told me that she would be here

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1 around 9:30, 10:00. I just got a text message from her a few
2 minutes ago that she's on her way. I'm expecting her to be
3 here, again, around 9:30, 10:00.

4 And just to tell you, again, I haven't had a chance
5 to speak to Mr. Miller, but in our brief conversation we had
6 yesterday, she did represent that she is going to testify that
7 the assault did not occur at all. So I wanted to let the Court
8 know that the parties know that that's --

9 THE COURT: Well, this will be interesting. I assume
10 there's a deposition that says otherwise.

11 MR. MILLER: Your Honor, first of all, she wasn't
12 there at the time of the assault. She was in the visiting room
13 and that's the extent --

14 THE COURT: I mean, all she can testify to is what
15 Mr. Magalios did or did not tell her about the assault.

16 MR. MILLER: Okay.

17 THE COURT: I mean, I assume she was not in the frisk
18 area.

19 MR. MILLER: Correct. They parted ways in the
20 visiting room and, at that point, the only -- the only activity
21 that occurred at that point was the interaction with Officer
22 Peralta.

23 She obviously is out to sabotage the case, and I
24 expressed my concerns about that before the trial began. My
25 concerns, obviously, are heightened now.

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1 THE COURT: There is a deposition, correct?

2 MR. MILLER: I'm sorry?

3 THE COURT: There is a deposition?

4 MR. MILLER: There is a deposition. There is.

5 And --

6 THE COURT: And in the deposition, does she
7 corroborate your client?

8 MR. MILLER: One-hundred percent.

9 THE COURT: So that's why God invented impeachment.

10 MR. MILLER: Well, I agree with that. I just -- my
11 concern -- well, let me try to lay it out a little further and
12 more in-depth.

13 Yesterday's conversation with my partner and
14 Ms. Tibaldi was really a three-party conversation.
15 Ms. Tibaldi's new boyfriend, who was just released from DOCCS
16 about two months ago, was the third party, and his tone and the
17 volume of his voice indicated to my partner that they are out
18 to do really anything to sabotage this case. And this is
19 something that is out of the ordinary, frankly, at least in my
20 experience, and I think it does call for an instruction to the
21 witness before she testifies that she should be only answering
22 questions and if there's an objection, she needs to wait for a
23 ruling.

24 Again, this is -- I'm just making suggestions, but
25 this is an extraordinary situation. And we know what her

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1 intentions are. My guess is her boyfriend will be in the
2 courtroom. He and my client are bitter enemies. He sat in the
3 courtroom yesterday during Mr. Magalios' testimony. I don't
4 know if your Honor saw this.

5 THE COURT: Somebody on my staff observed somebody
6 glaring at Mr. Magalios during his testimony.

7 MR. MILLER: Correct.

8 And so this is the situation we're dealing with, and
9 I'm concerned that somehow this trial will not go smoothly
10 unless there is some type of instruction to her.

11 THE COURT: Well, you know, it sort of depends on
12 what happens. It also depends on what she's told defense
13 counsel she's going to say. If her position is I lied in my
14 deposition because Mr. Magalios and I were in a conspiracy to
15 fabricate this whole thing, that's one set of troubles for her.
16 If she says I lied in my deposition because I was afraid of
17 Mr. Magalios because he's violent, that is probably admissible.
18 If she says I didn't say what my deposition says it says, the
19 jury will have to figure out what it makes of this.

20 Obviously, defense counsel can't call a witness who
21 they don't believe is telling the truth, ethically, so I assume
22 Ms. Acosta-Pettyjohn and Mr. Turkle believe that this witness
23 lied in her deposition and is going to tell the truth now. I
24 don't know what their basis for that conclusion is, but I don't
25 think I can -- obviously, the witness is going to testify.

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1 You'll be able to impeach her. Her prior sworn testimony will
2 be affirmative evidence that you can argue because it's sworn,
3 and the jury's going to sort it out.

4 The first time she goes too far in answering a
5 question, I will instruct her to only answer the question. But
6 if what's really going on here is either she or her new
7 boyfriend are making stuff up to torpedo your client's case,
8 I'm sure, on your cross, you'll be able to get that across to
9 the jury.

10 I don't know what more I can do. If it looks like
11 she's not confining herself to the questions, I'll direct her
12 to confine herself to the questions.

13 What was the other thing you wanted me to instruct
14 her, besides just answer the question?

15 MR. MILLER: That really should do it.

16 THE COURT: All right. Well, I mean, look, if I
17 think she's incriminating herself, at some point, I have to
18 tell her about her Fifth Amendment rights. I don't know when
19 we'll get to that point, but I assume she's going to have to
20 have some explanation.

21 Ms. Acosta-Pettyjohn, do you know what her
22 explanation is going to be for why she will be contradicting
23 her deposition?

24 MS. ACOSTA-PETTYJOHN: Again, in the brief
25 conversation I had with her yesterday, it was about 10 minutes,

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1 your Honor, I did ask her how come she would be testifying to
2 this today and not at her deposition. She did inform me that
3 she is, in fact, afraid of Mr. Magalios, she was afraid of
4 Mr. Magalios at that time, she's still afraid of Mr. Magalios
5 now, and that's why she testified the way she did at her
6 deposition.

7 THE COURT: Okay. Well, it's times like this where I
8 miss being a trial lawyer because I can think of a lot of
9 questions I would ask.

10 Maybe that's true, and if it's true, then the jury
11 will evaluate it, or if it's not true, the jury will evaluate
12 that. And I'm sure there's some interesting questions you can
13 ask about the new boyfriend.

14 It's going to be an interesting morning.

15 MS. ACOSTA-PETTYJOHN: With that said, your Honor, I
16 know that she's on her way. Would we be able to take her out
17 of turn?

18 THE COURT: Well, as I understand it, Mr. Miller's
19 going to rest this morning.

20 Am I right?

21 MR. MILLER: I have one witness.

22 THE COURT: Okay.

23 MR. MILLER: And I'm going to offer just the sketch
24 with the drawings on it and then I'm going to rest.

25 THE COURT: All right.

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1 Well, it sounds like if she's going to arrive at
2 9:30, 10:00, she'll be next in line, but I don't mind
3 accommodating her since she did come yesterday. So if you call
4 your doctor -- no, you're not calling your doctor. If you call
5 one of the defendants and she arrives and you want to break and
6 call her, that's all right with me.

7 MS. ACOSTA-PETTYJOHN: Thank you, your Honor.

8 THE COURT: But something's going to happen here.
9 She's going to -- it sounds like she's represented to you that
10 she's going to admit to perjury and, at that point, I think I
11 have to alert her. And I think I should do it outside the
12 presence of the jury. So maybe the right thing to do is to
13 have her come in and for me to have that conversation with her
14 before she testifies. I mean, I don't want to discourage her
15 from testifying, but if she's going to incriminate herself, she
16 needs to know that she's going to incriminate herself and that
17 she has a right to consult with counsel before she does that.
18 So maybe I'll have that conversation with her outside the
19 presence of the jury before she takes the stand. As I said, I
20 don't want to discourage her from testifying, but it sounds
21 like you expect her to say she perjured herself, although she's
22 going to say it was under duress.

23 MR. MILLER: The only question I would raise is
24 whether counsel has suggested to her that she consult with a
25 criminal lawyer before she comes to court today.

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1 MS. ACOSTA-PETTYJOHN: Again, I did not give any
2 legal advice to Ms. Tibaldi. I did not suggest anything. Our
3 conversation was very brief yesterday. Most of it was the
4 logistics of her being here and the logistics of her no longer
5 being under the subpoena, your Honor.

6 THE COURT: And is it your understanding that she's
7 going to say -- well, even by plaintiff's account, she
8 obviously didn't see the assault. Is she going to say the
9 events in the visiting room never happened and that
10 Mr. Magalios never told her that he was -- is she going to say
11 she was in a conspiracy with him to fabricate this whole thing?

12 MS. ACOSTA-PETTYJOHN: So from what I'm
13 understanding, your Honor, she is saying that she did visit him
14 that day in the visiting room. Everyone -- all the officers
15 there were usually nice; she's visited them before. She can't
16 remember if, on this day, they were more aggressive than usual;
17 however, when she left the visiting room, she received a call
18 from Mr. Magalios stating that he was not assaulted by our
19 three clients, or two specifically, but, in fact, was assaulted
20 by another inmate and was going to blame it on our three
21 clients.

22 THE COURT: All right.

23 MS. ACOSTA-PETTYJOHN: And that that's what he told
24 her, your Honor.

25 THE COURT: All right. Well, we'll see what happens.

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1 You guys should be using the phones. You guys should
2 be using the phones.

3 MR. MILLER: Yes. We only have two.

4 THE COURT: Oh. I thought there were three there.

5 (Pause)

6 MR. MILLER: Your Honor, I have one thing to add.
7 Hot off the presses.

8 Mr. Giannini, who is my next witness, is out in the
9 hallway. He just spoke to Ms. Sinise, and he told Ms. Sinise
10 that Ms. Tibaldi's boyfriend just approached him and said I'm
11 going to kill you if you testify for Mr. Magalios and I'm going
12 to kill anyone else who testifies for Mr. Magalios.

13 I believe this has now been heightened to an
14 extraordinary situation, and I'm going to ask defense counsel
15 to think real hard about what their next step is going to be,
16 because I know what my next step would be if I were in their
17 shoes. I don't like anyone being threatened like that, nor
18 does anyone else in this courtroom. And that --

19 THE COURT: No. Well --

20 MR. MILLER: -- could be a crime that he just
21 committed.

22 THE COURT: Oh, if it's true, it's a crime.

23 So let me suggest a couple of things.

24 First of all, obviously, it's fair game for you to
25 ask your client on the stand if that happened.

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1 MR. MILLER: Not my client.

2 THE COURT: Excuse me. Your witness, your witness.

3 Second, we'll get some security up here and, third,
4 there's a U.S. Attorney's Office on the third floor.

5 I would encourage your witness to report that
6 conduct.

7 In fact, why don't you see, Walter, if Ronnie can
8 come up.

9 THE DEPUTY CLERK: Okay.

10 THE COURT: That's our marshal.

11 I'm not saying -- I have no opinion on the facts
12 because I wasn't there, but I certainly don't like the notion
13 that somebody's making threats.

14 MR. MILLER: Your Honor --

15 THE COURT: But if it's true, it's going to help your
16 case, so let's -- we're just going to have to see how this
17 plays out. Again, the defense lawyers have to make a decision
18 as to what they ethically are comfortable with.

19 (Pause)

20 MR. MILLER: Your Honor, can I have two minutes just
21 to speak to this witness, Mr. Giannini, to get more detail?

22 THE COURT: Yes.

23 MS. ACOSTA-PETTYJOHN: And, your Honor, Ms. Tibaldi
24 is here, and I know you wanted to speak to her outside the
25 presence of the jury. If you want, I guess, when we reconvene,

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1 we can have her come in.

2 THE COURT: Yes. Let's do that before 9:30, if we
3 can.

4 (Recess)

5 THE COURT: Mr. Miller, what is the update?

6 MR. MILLER: The update is that everything that I
7 represented to you is true. It's more detailed. There were
8 actual threats of death against this witness, Mr. Giannini, and
9 my client.

10 Number two, the witness is a young kid. He's 24
11 years old. And he lives in Wappingers Falls. And it took a
12 lot of discussions with his father to even allow him to come
13 here to testify. He had to get permission from his parole
14 officer to come here. His father is now on the phone like just
15 blowing a gasket, like any father would, and he made me promise
16 him that his son will be protected, number one; that his parole
17 officer is going to be informed of this; and that he get
18 escorted out of here in a safe way because -- I've never heard
19 a father as angry as I just heard his father on the phone.

20 THE COURT: Well, I think we can -- we're going to --
21 security is on its way up and there's going to be somebody in
22 the courtroom, there's going to be somebody in the hallway, and
23 we have a marshal here now who, after this morning's
24 proceedings, is going to have a chat with -- what's the name of
25 the gentleman who allegedly made the threats, the new

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1 boyfriend?

2 MR. MILLER: His name is Justin Zamani. That's
3 Z-A-M-A-N-I.

4 THE COURT: Whether he finds himself in handcuffs or
5 not is not up to me, but the marshals are aware of the
6 allegation that he's engaged in witness tampering and they will
7 decide what to do.

8 I think, under the circumstances, I should speak to
9 Ms. Tibaldi now and then Mr. Giannini should testify. Let's
10 get him on and off. And I will ask that a security officer get
11 him out of the building with Mr. Zamani remaining here on the
12 sixth floor so that we don't have any further interactions
13 between them.

14 MR. MILLER: The other thing I would suggest is, he
15 doesn't know their names, and in order for him to testify
16 completely, he needs to identify them, and so we can do it, in
17 my opinion, one of two ways. We can stipulate that it was
18 Mr. Zamani who made those comments or we can have Mr. Zamani in
19 the courtroom just for identification purposes during his
20 testimony.

21 THE COURT: Well, I can't make the guy come in the
22 courtroom, but your witness can describe him and testify as to
23 his understanding of who he is. And you can give Mr. Zamani a
24 subpoena, I suppose, to make him show up.

25 MR. MILLER: Okay.

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1 THE COURT: All right. Let me speak to Ms. Tibaldi.

2 (Lisa Tibaldi entered the courtroom)

3 THE COURT: Come on up, Ms. Tibaldi.

4 THE DEPUTY CLERK: Just watch your step on the
5 carpet.

6 I just wanted to talk to you for a moment -- you can
7 sit if you like -- before you testify because it's been brought
8 to my attention that --

9 MS. TIBALDI: Can I take this off?

10 THE COURT: Yes. You can take it off in there.

11 The lawyers are expecting you to testify contrary to
12 what you've previously testified to under oath, and if that is
13 going to be your testimony, you need to be aware that falsely
14 testifying under oath is a crime for which you could, in
15 theory, be prosecuted, and that, under the Fifth Amendment, you
16 have a right to refuse to testify if your testimony would tend
17 to incriminate you. And it is probably -- I shouldn't say it
18 is probably. It is a good idea to consult with a lawyer before
19 you testify to something that would incriminate you.

20 I'm not suggesting that any prosecutor would have any
21 interest in your case or that any prosecutor would prosecute
22 you for lying under oath, but you need to be informed that it
23 is a possibility that it is -- that lying under oath is illegal
24 and that if your testimony would be that you previously lied
25 under oath, you would be incriminating yourself and you have a

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1 right under the Fifth Amendment not to do that. And I
2 encourage you to consult with counsel before you testify on
3 that subject.

4 That's all I wanted to tell you

5 MS. TIBALDI: Okay.

6 THE COURT: All right.

7 And the subpoena, by the way, compels you to come to
8 court. And I know you came yesterday and you've been
9 inconvenienced, and I'm sorry about that. The subpoena compels
10 you to come to court. It doesn't compel you to testify to
11 anything that would incriminate yourself.

12 If there is anybody who is threatening you or
13 coercing you or putting you in an uncomfortable position with
14 respect to your testimony, you should tell me about that, too.

15 All right. Thank you.

16 We have one brief witness ahead of you and then I
17 believe the defendants are going to call you as a witness. And
18 I do encourage you to consult with counsel if you're at all
19 concerned.

20 (Ms. Tibaldi left the courtroom)

21 THE COURT: All right. We'll talk about the charge
22 later. I don't think we'll be summing up today anyway, so
23 maybe we can do it at the end of the day. Right now, I guess
24 we are --

25 Oh, and, Ms. Tibaldi, witnesses can't be present when

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1 other witnesses are testifying, so if you wouldn't mind
2 stepping out.

3 We're ready for Mr. Giannini.

4 MR. MILLER: Yes.

5 THE COURT: Okay.

6 The security officer asked whether Mr. Zamani could
7 be in the courtroom and I said yes, since I don't think either
8 side's planning on calling him.

9 MR. MILLER: Your Honor, I didn't hear what you just
10 said.

11 THE COURT: The security officer asked if Mr. Zamani
12 was allowed in the courtroom and I said yes because I don't
13 think either side is planning on calling him.

14 (In open court; jury present)

15 THE COURT: You all should be seated.

16 Good morning, everyone. I apologize for keeping you
17 waiting. The lawyers and I had some issues to sort out. We
18 met at 9, but we didn't quite complete our discussions on time,
19 but now we're squared away and plaintiff may call his next
20 witness.

21 MR. MILLER: Thank you.

22 Good morning, everybody.

23 JUROR NO. 3S: Good morning.

24 MR. MILLER: Before I call my next witness, your
25 Honor, on consent, I'm going to offer into evidence what was

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Giannini - Direct - Mr. Miller

1 previously marked as Plaintiff's 6 and offer it as Plaintiff's
2 6A, which is the sketch with the notes that were taken during
3 testimony by both counsel. So this is now offered as 6A.

4 THE COURT: That's received.

5 (Plaintiff's Exhibit 6A received in evidence)

6 MR. MILLER: Plaintiff calls Nicholas Giannini to the
7 stand.

8 NICHOLAS GIANNINI, called as a witness by the Plaintiff,
9 having been duly sworn, testified as follows:

10 THE DEPUTY CLERK: Please have a seat. And you can
11 take your mask off.

12 THE COURT: There's a filter in there that makes it
13 safe.

14 THE DEPUTY CLERK: Please state your full name for
15 the Court and spell out your last name slowly.

16 THE WITNESS: Nicholas Giannini. G-I-A-N-N-I-N-I.

17 THE COURT: Go ahead, Mr. Miller.

18 MR. MILLER: Thank you.

19 DIRECT EXAMINATION

20 BY MR. MILLER:

21 Q. Good morning, Nick.

22 A. Good morning.

23 Q. Are you a little nervous?

24 A. A little bit, yes, sir.

25 Q. I'm going to be asking you some questions about an

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Giannini - Direct - Mr. Miller

1 occurrence at Fishkill on September 3rd, 2017.

2 You were an inmate at that time?

3 A. Yes, sir.

4 Q. But before I ask you about that day, I want to ask you
5 about an incident that took place maybe five, ten minutes ago
6 out in the hallway.

7 A. Yes.

8 Q. Were you out in the hallway about five, ten minutes ago?

9 A. Yes, sir.

10 Q. And the incident that occurred, are you a little shaken up
11 by it?

12 A. A little bit, yes, sir.

13 Q. Okay. Do you want to just like take a deep breath.

14 Were you approached by a man and a woman out in the
15 hallway?

16 A. Yes, sir. Yes.

17 Q. And could you describe first the woman.

18 A. She was about five-eight, five-seven, skinny, blonde hair.
19 She had a corona mask on, so --

20 Q. I'm sorry?

21 A. She had a corona mask on. She had like a gray suit,
22 pantsuit.

23 Q. Okay. Are you aware that that woman who you just
24 described is named Lisa Tibaldi and is the ex-wife of
25 Mr. Magalios?

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Giannini - Direct - Mr. Miller

1 A. I am now.

2 Q. And are you aware that the man that was with her is named
3 Justin Zamani and he is her current boyfriend? Were you aware
4 of that?

5 A. I am now.

6 Q. And what causes you to be so nervous right now about that
7 encounter?

8 A. He threatened my life as well as Nicholas Mag -- Mag --
9 I'm not sure how to pronounce the last name.

10 Q. He threatened your life and he threatened --

11 A. Yes.

12 Q. -- Nicholas Magalios' life?

13 A. Yes.

14 The encounter began outside of the courthouse when he
15 heard me state I was coming to courtroom 520. He said who am I
16 here for. I said I do not want to speak. He said all right.
17 Then he stepped forward towards me and continued to like mean
18 mug me -- he like took a step towards me like in an aggressive
19 manner and says, all right. I think he said thank you, I
20 respect that, thank you. And then like he mean mugged me is
21 what I would say, giving me an intimidating look --

22 THE COURT: I'm sorry to interrupt you.

23 THE WITNESS: I'm sorry, your Honor.

24 THE COURT: I'm sorry to interrupt you.

25 You said mean mug?

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Giannini - Direct - Mr. Miller

1 THE WITNESS: Intimidate. Like looking in an
2 intimidating manner.

3 THE COURT: Okay. Like a mean face you mean?

4 THE WITNESS: Yes, a mean face, yes.

5 THE COURT: Okay. Thanks.

6 A. Then I went through security. I came to the fifth floor.
7 I sat down on the bench. Sat, you know, to the side. They
8 came up after me. They came up. They sat to the other side.
9 And then he stepped -- he got up and he walked towards me and
10 he's just like who are you here for? Are you testifying on
11 Nicholas' behalf? Because I'm here to murder him and if you're
12 on the same -- and you if you're on his side, if you're on the
13 same page.

14 And I don't remember the exact words, but I'm sure that
15 was recorded out there and could easily be pulled.

16 Q. Did that shake you up?

17 A. Absolutely. Why would it not?

18 Q. Did you call your dad?

19 A. Absolutely.

20 Q. Was he upset?

21 A. Yes. Very much so.

22 So I'm here to do what's right and now I'm getting my life
23 threatened.

24 Q. Are you aware that there's security here now?

25 A. Yes, but it's not what goes on in this building that I'm

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Giannini - Direct - Mr. Miller

1 concerned with, it's what may lead beyond this.

2 Q. I assured you before you entered this courtroom that
3 everyone involved is going to do everything they can to protect
4 you.

5 A. Right.

6 Q. You understand that?

7 A. I understand that.

8 Q. And did I also tell you that you will be safely taken out
9 of this courthouse and that any steps that need to be taken
10 will be taken? Do you understand that?

11 A. I understand that. It's some reassurance for me.

12 Q. Do you have a parole officer?

13 A. Yes.

14 Q. Are you going to tell your parole officer about this
15 incident?

16 A. If -- yeah, I suppose so.

17 Q. Yeah. All right.

18 I'm going to ask you now some questions about September
19 3rd, but I need for you to assure all of us that you're okay.

20 A. I'm all right. It's just I got anxiety, so I'm a little
21 nervous, but I'm all right.

22 Q. Okay.

23 Were you subpoenaed to come here to court today?

24 A. Yes, sir.

25 Q. You live up in Wappingers Falls?

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Giannini - Direct - Mr. Miller

1 A. Yes, sir.

2 Q. With your dad?

3 A. Yes, sir.

4 Q. And you work?

5 A. Yes, sir.

6 Q. What type of work do you do?

7 A. I'm a -- I work in a lumberyard, forklift operator, and I
8 do porter work throughout the yard.

9 Q. The reason that you were in Fishkill back in September of
10 2017 is because you pled guilty to a robbery in the second
11 degree, correct?

12 A. Correct.

13 Q. How far did you get in school?

14 A. I -- the beginning of tenth grade and -- or the end of
15 ninth grade. And that was when I was incarcerated. But during
16 my incarceration, I -- my first two months, I got my high
17 school equivalency and I obtained 33 college credits while
18 incarcerated as well as a couple -- a few trades. I did
19 general business, I did custodial maintenance, and I did
20 some -- I didn't finish with the electrician course.

21 Q. Okay. Nice. Congratulations.

22 A. Thank you.

23 Q. Before meeting with me just outside the courtroom five,
24 ten minutes ago, had we ever met before?

25 A. No.

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Giannini - Direct - Mr. Miller

1 Q. Do you remember September 3rd, 2017 at Fishkill?

2 A. After receiving -- yes, after receiving the subpoena and
3 refreshing my memory, yes. It's vivid, yes.

4 Q. Did you have a visit that day?

5 A. Yes.

6 Q. Do you remember who you were visiting with?

7 A. It was my mother.

8 Q. Do you remember where the visit was?

9 A. My particular visit was in the single-visit -- there's two
10 separate visit rooms. There's one with multiple visitors and
11 there's one with just one-on-ones. I was with the one-on-one
12 visitors because it was just me and my mother.

13 Q. Okay. And when your visit was done, could you tell the
14 jury like where you went when your visit with your mom was
15 over?

16 A. Yes. I entered the frisk -- I go towards the frisk area,
17 and that's when I -- when I -- as you leave, you have to hand
18 the officer your I.D. and the -- and they direct you to sit on
19 the benches, which was as usual every day, but, on this
20 particular day, like when --

21 Q. I'll get to what happened after.

22 A. Sorry.

23 Q. I just want to ask you did you follow that procedure of --

24 A. Yes. Of course.

25 Q. -- exiting the visiting room and entering into the frisk

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Giannini - Direct - Mr. Miller

1 area?

2 A. Yes.

3 Q. And the jury has already seen photos of that area.

4 Do you recall if there are benches on both sides of that
5 corridor?

6 A. Yes, there is.

7 Q. And did you sit down on one of those benches?

8 A. Yes. The bench to the left. When you enter the frisk
9 area, I sat to the bench to the left like I usually do.

10 Q. And when you sat down on that bench, your expectation was
11 that you would be strip frisked at some point?

12 A. Yes.

13 Q. Were you sitting down on that bench by yourself or were
14 you with someone else?

15 A. There was three other people with me.

16 Q. And do you remember the names of those other people?

17 A. Not until I was given the paperwork and I seen -- I
18 believe that's him right there, that individual's name.

19 Q. Okay. Now --

20 THE COURT: Indicating the plaintiff.

21 MR. MILLER: Indicating Mr. Magalios.

22 Q. How long were you seated on the bench before something
23 else happened?

24 A. Two minutes.

25 Q. And what happened after that two minutes that you were

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Giannini - Direct - Mr. Miller

1 sitting on the bench?

2 A. A few officers rushed in with Mr. Magalios and they rushed
3 him to the back and they were like screaming orders and stuff
4 to like -- excuse my language -- like get the -- you know, a
5 lot of profanity, get the fuck back there and let's go, what do
6 you got or something like that. It was just like a whole bunch
7 of screaming going on. And they had him like -- they were
8 grabbing him and pulling him and bringing him to the back of
9 the search room.

10 Q. Where did they bring you?

11 A. They told everybody to get the fuck out and step into like
12 the hallway. Like when you first enter the frisk area, the
13 door that separates it and there's like a little waiting area
14 where they collect the IDs, and that's where they told us to --
15 when they said get the fuck out, that's where they wanted us to
16 go wait.

17 Q. I'm going to show you a photo in a second, but I just want
18 you to describe in your words, if you're sitting on the bench
19 on the left and they told you to, as you said, get the fuck
20 out, tell us the route that you took, just in your own words.

21 A. I got up and I just walked -- I walked to the -- right out
22 to the room, where the little waiting area is.

23 Q. Okay. Could you -- where they brought you to, could you
24 see the benches?

25 A. No. They made us stand against the wall so we couldn't

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Giannini - Direct - Mr. Miller

1 see anything. Your face is against the wall.

2 Q. Could you describe in any way the officers who told you to
3 get the fuck out of here?

4 A. I believe I recognize -- I believe I recognize a few.

5 Q. You recognize them here in the court?

6 A. Yes.

7 Q. Tell us who you recognize.

8 A. The pretty boy, the pretty Spanish kid over there. I
9 definitely recognize him from his aggression. He was the -- he
10 was like the most aggressive. He's always in -- like I don't
11 know how to explain it.

12 THE COURT: Indicating Mr. Peralta.

13 A. The individual in the brown -- the one in the brown suit,
14 he was there, but he wasn't -- he -- he was not aggressive
15 during that day. He was not -- I never seen him as aggressive.

16 THE COURT: Indicating Mr. Blount.

17 A. The other one, as well, he was there.

18 Q. And what actions did you see him take?

19 Well, first of all, the gentleman sitting in the middle,
20 is that the one who you said wasn't that aggressive that day?

21 A. Yes. I -- nah, he was not -- he was not one of the
22 individuals I remember as slamming him against the wall and
23 stuff like that as they were escorting him.

24 MR. MILLER: For the record, that's Officer Blount.

25 Q. Now, the fellow the farthest from you, describe what his

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Giannini - Direct - Mr. Miller

1 actions were from --

2 A. Just yelling, a lot of yelling and, you know, assisting
3 the escort, I guess we'll term it, the escort.

4 MR. MILLER: Indicating Officer Bailey.

5 Q. When they said to face the wall, were you literally like
6 facing a wall?

7 A. Yes. My face -- my nose is pressed against the wall, yes,
8 yes.

9 Q. And for how long were you in that position?

10 A. Five, ten minutes. Probably closer to five. It felt like
11 ten.

12 Q. Okay. And after that period of time, whether it was five
13 minutes or ten minutes or whatever it was, what happened next?

14 A. Just heard a lot of banging and screaming. Sounded like,
15 you know, just like a scuffle was going on I guess we'll say.

16 You know, we knew -- I knew it was in the back of like
17 where we get searched because like these wood cabinet things
18 that divide -- the dividers for the strip rooms, so you heard
19 that like getting banged against, you know, like the radiator
20 hitting.

21 Q. And, at some point, did you leave that area against the
22 wall?

23 A. When everything was done with, it like quiet down, like
24 five, ten minutes, they told us to go sit back down.

25 Q. And when they told you to go sit back down, was that in

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Giannini - Direct - Mr. Miller

1 the area of the benches?

2 A. Yes.

3 Q. And did you make any observations when you returned to the
4 benches?

5 A. Yeah. Mr. Magalios was sitting in the corner like balled
6 up.

7 Q. What do you mean by balled up?

8 A. Like keeled over like his stomach, like this, like, you
9 know, head down.

10 Q. And did you speak to him? Did you hear anyone else --

11 A. I asked him what happened. I think I said -- I just asked
12 him like what happened, like are you all right, like what
13 happened to you. And he just like -- he didn't really want to
14 talk. He was like they fucked me up, they fucked me up. And I
15 could see like he was hurting, he was in pain. He had like red
16 marks on him and stuff like that. It was obvious what
17 happened.

18 Q. At some point after that conversation, did you get strip
19 searched?

20 A. Yes.

21 Q. And you went back to your housing unit?

22 A. Yes.

23 Q. What was your housing unit?

24 A. I believe I was in J dorm at the time.

25 Q. J dorm?

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Giannini - Direct - Mr. Miller

1 A. Yes.

2 Q. So you didn't live where Mr. Magalios lived?

3 A. I don't know where he lived.

4 Q. Okay. At some point a few days later, you signed an
5 affidavit?

6 A. Yes. I wrote up an affidavit, yes.

7 Q. And then a few months later, did you speak to an
8 investigator about this?

9 A. OSI, yes.

10 Q. OSI?

11 A. I believe twice I spoke with them.

12 MR. MILLER: Okay. Thank you, Nick. I think someone
13 else is going to ask you some questions now.

14 THE WITNESS: Okay.

15 THE COURT: Ms. Acosta-Pettyjohn.

16 CROSS-EXAMINATION

17 BY MS. ACOSTA-PETTYJOHN:

18 Q. Good morning, Mr. Giannini. Can you hear me?

19 A. Yes.

20 Q. Okay. Good. I feel like I'm yelling, so --

21 Now, you stated earlier that you were threatened this
22 morning, correct?

23 A. Yes.

24 Q. Were you threatened by any of my three clients; Officer
25 Peralta, Officer Bailey, Officer Blount?

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Giannini - Cross - Ms. Acosta-Pettyjohn

1 A. No.

2 Q. And the gentleman who threatened you, have you ever seen
3 him before today?

4 A. No.

5 Q. And I know you stated you were nervous. Were you nervous
6 before coming to the courthouse at all?

7 A. No.

8 Q. And what was your understanding about being subpoenaed to
9 testify today?

10 A. My understanding is that I would come and I would have to
11 state what had happened that day.

12 Q. Now, this incident occurred on September 3rd, 2017. You
13 were incarcerated at Fishkill at that time, correct?

14 A. Yes.

15 Q. And you were incarcerated for the crime of robbery to the
16 second degree?

17 A. Yes.

18 Q. And when were you released from Fishkill?

19 A. From Fishkill?

20 Q. Yes.

21 A. I believe it was December 31st, 20 -- I wasn't released
22 from Fishkill. I was moved to another facility is what you
23 mean?

24 Q. What facility were you moved to?

25 A. I was moved to Clinton.

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Giannini - Cross - Ms. Acosta-Pettyjohn

1 Q. Were are you released from Clinton or moved to another
2 facility?

3 A. I was moved to another facility.

4 Q. Which facility were you moved to?

5 A. I moved from Clinton to Gouverneur, from Gouverneur to
6 Cossackie, Cossackie to Eastern.

7 Q. So was Eastern the last facility before you were released?

8 A. Yes.

9 Q. And when were you released from Eastern?

10 A. September 13th, 2020.

11 Q. I'm going to bring your attention to September 3rd, 2017.
12 You remember having a visit, correct?

13 A. Yes.

14 Q. And you testified earlier it was with your mother?

15 A. Yes.

16 Q. Do you remember the time that visit started?

17 A. No.

18 Q. Do you remember the time that visit ended?

19 A. Approximately -- I want to say around -- hmm. No, I can't
20 say the exact time. It was -- it was -- it would be past
21 noontime, though.

22 Q. And before September 3rd, 2017, how many times would you
23 say you've had a visit at Fishkill Correctional Facility?

24 A. Could you repeat that. I'm sorry.

25 Q. Sure.

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Giannini - Cross - Ms. Acosta-Pettyjohn

1 Before September 3rd, 2017, how many times would you say
2 you had visits while in Fishkill Correctional Facility?

3 MR. MILLER: Objection. Relevance.

4 THE COURT: I'll allow it.

5 A. Every weekend.

6 Q. And I know you testified earlier that when you end the
7 visit, you go through a certain procedure. Correct?

8 A. Yes.

9 Q. And that procedure includes you going through a pat-frisk
10 area and a strip-frisk area, correct?

11 A. We go through the frisk -- we don't get pat frisked on the
12 way out.

13 Q. So you go just to get strip frisked?

14 A. Yes.

15 Q. And that strip-frisk area, it's located next to the
16 visiting room, correct?

17 A. It's attached in the building, yes. It's in the building.

18 Q. Can you describe the frisk area for me.

19 A. The -- the -- like the benches included? Like the waiting
20 area or just the frisk area where we get strip searched?

21 Q. The whole entire frisk area.

22 A. Well, I'm just going to start at the door when you enter
23 the frisk area. It says frisk area on the door. You go in and
24 there's like a little table to the right of you along with a
25 desk, and that desk is where an officer normally seats -- is

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Giannini - Cross - Ms. Acosta-Pettyjohn

1 seated with a little -- where they hold the IDs. The IDs are
2 held there as well. And there's a -- there's a door, like a
3 doorway -- there's no actual door there -- with benches like
4 silting behind these like cinderblock walls. And then you go
5 back through there and you make a left and then there's like a
6 strip-frisk area. There's wooden dividers that separate all
7 the strip areas. And then there's the package room window to
8 the left, the doorway that goes to the walkway, and then the
9 other side, you come out and there's like a bathroom, and
10 that's where we come in for our visits.

11 Q. Okay. And when you were waiting at the frisk area at the
12 end of your visit, how many inmates were with you?

13 A. About three. I'm not sure the exact number.

14 Q. Do you remember the names of any of these inmates?

15 A. No.

16 Q. Did anybody --

17 A. Other than -- other than who I know now.

18 Q. Mr. Magalios?

19 A. Yeah.

20 Q. When did you come to find out Mr. Magalios' name?

21 A. During the investigation.

22 Q. And when you say investigation, is that the OSI?

23 A. OSI investigation, yes.

24 Q. Do you remember when that investigation started?

25 MR. MILLER: Objection.

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Giannini - Cross - Ms. Acosta-Pettyjohn

1 THE COURT: Yes. Relevance.

2 Q. When you say you found out his name through the
3 investigation, did somebody from OSI speak to you?

4 A. Say that again.

5 Q. When you said you found out his name through the
6 investigation, from OSI, did somebody from OSI speak to you?

7 A. The OSI investigator, yes.

8 Q. Do you know how long after the incident the OSI
9 investigator spoke to you?

10 A. I can't give you the exact date, no.

11 Q. Now, when Mr. Magalios entered the waiting area, were you
12 already there?

13 A. I was seated, yes.

14 Q. And you testified earlier that officers had told you to
15 leave that area, correct?

16 A. Not in those words, but yes.

17 Q. How many officers told you to leave that area?

18 A. Like four, five.

19 That stated -- like how many officers used them words to
20 get the fuck out?

21 Q. Yes.

22 A. There was so much yelling, but it was like four or five
23 officers there.

24 Q. And were you actually escorted to leave that area?

25 A. Was I escorted?

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Giannini - Cross - Ms. Acosta-Pettyjohn

1 Q. Yes.

2 A. No.

3 Q. Did you actually leave that area?

4 A. We were told -- we got right by behind the wall and faced
5 the wall.

6 Q. Okay. Was there any officer with you when you left that
7 area to face the wall?

8 A. I believe there were -- yeah. There was one officer there
9 blocking the doorway.

10 Q. Do you remember that officer's name?

11 A. No.

12 Q. Was it either -- was it Officer Peralta?

13 A. I can't -- no, I can't state.

14 Q. So you don't know if it was Officer Bailey, either?

15 A. Which one is Officer -- was it any of those three that
16 were blocking the doorway?

17 Q. Yes. Was it any of these three that --

18 A. No, they were not blocking the doorway.

19 Q. Okay. I'm going to show you what's been marked as
20 Plaintiff's Exhibit 6A.

21 Give me a second. It takes a while to get the mask on.

22 (Pause)

23 Q. Okay, Mr. Giannini, can you hear me now?

24 A. Yes.

25 Q. Okay. So it's my understanding that -- well, withdrawn.

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Giannini - Cross - Ms. Acosta-Pettyjohn

1 Does this diagram look familiar to you?

2 A. Terrible artistic work, but, yes, vaguely.

3 Q. What does this diagram look like to you? What is it
4 representing?

5 A. It looks like a poor depiction of the visit room.

6 Q. Okay. And do you see the frisk area in this diagram?

7 A. Could you point out the -- are you -- may you point out
8 the desk in which -- in the visit area --

9 Q. Sure.

10 A. -- so I can get a general idea of where things are.

11 Q. So it's my understanding that this right here is the desk
12 the officers --

13 A. Okay. Yes. The arrows you're pointing to is the frisk
14 area.

15 Q. So this is the pointing to the frisk area?

16 A. Yes.

17 Q. So would this be the frisk area?

18 A. Yes. That's the waiting area. That's where the benches
19 are.

20 Q. When you say that, this is where the benches are?

21 A. Yeah, those two, those square things, those are the
22 benches, yes.

23 Q. Can you tell me where you were standing when
24 Mr. Magalios --

25 A. I was seated on the left side. Other left. Yeah. Left.

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Giannini - Cross - Ms. Acosta-Pettyjohn

1 Sorry. Excuse me.

2 Q. Sorry. Our lefts and rights are all wrong.

3 A. Yeah, I know, I understand.

4 Q. So this side?

5 A. Yes.

6 Q. And when you were told to move to the other side, you said
7 that you went down to like a hallway or something?

8 Can you just tell me where you went.

9 A. Go closer to the doorway.

10 Q. Here?

11 A. Yeah. A little down towards the wall. Yeah. Like facing
12 like on the corner right where the wall is. No, the other
13 side. The other corner. The other corner towards the benches.

14 Q. You were facing this wall?

15 A. Yeah. I was right there against that wall.

16 Q. Okay. And I know you said there were about three our
17 inmates. Were all the other inmates with you?

18 A. They were -- we were all in that little -- when they told
19 us to get the fuck out, we were all in that little room right
20 there.

21 Q. This area?

22 A. I was facing the wall. I'm not exactly sure. There might
23 have been one right next to me, but -- we were all in that
24 little -- it's a small room.

25 Q. Okay.

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Giannini - Cross - Ms. Acosta-Pettyjohn

1 A. We were all facing the wall, as is, you know, common
2 knowledge. You do that.

3 Q. And did you have to go through a door or anything to get
4 to this area?

5 A. There's no like door like a -- I'm -- a doorway, I suppose
6 we'll say, but not a door.

7 Q. Okay. Now, you had stated that you wrote a statement,
8 correct?

9 A. Yes.

10 Q. And do you remember when you wrote that statement?

11 A. The exact date, no.

12 Q. Do you know how soon after the incident you wrote a
13 statement?

14 A. Right away. I -- I believe it was right as soon as I got
15 the -- the witness -- the call in for the witness, the OSI,
16 when they called on behalf of -- like once I got all the names
17 and stuff like that, that's when I went for the affidavit.

18 Q. And did anybody from OSI give you the names of any of the
19 parties for this allegation?

20 A. Yeah. It was on the tier 3 ticket.

21 Q. And do you remember the exact names that are on the tier 3
22 ticket?

23 A. I said tier 3. I meant the investigation report. Excuse
24 me. I'm sorry. I don't know why -- investigation report.

25 Q. That's okay.

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Giannini - Cross - Ms. Acosta-Pettyjohn

1 Do you remember the names that were on the investigation
2 report?

3 A. Magalios, Anthony something or something like that. The
4 Spanish fellow right there. I know that. That's the only name
5 I really remembered.

6 Q. Do you remember his name?

7 A. Anthony -- Anthony something.

8 I'm sorry. I just --

9 Q. No, it's -- don't worry about it.

10 When you wrote this statement, did you write it for --
11 withdrawn.

12 Why did you write the statement?

13 A. Because it's what happened and it's going to continue
14 happening if nothing's done about it.

15 Q. Did somebody tell you to write the statement?

16 A. Absolutely not.

17 Q. Did Mr. Magalios tell you to write a statement for his
18 attorneys?

19 A. No.

20 Q. Now, I know you stated earlier that you saw Mr. Magalios
21 when you returned to the waiting area at the benches, correct?

22 A. Yes.

23 Q. And you testified that he was all balled up, correct?

24 A. Yeah. I wasn't sure which corner he was in, but, yes, he
25 was balled up in a corner with benches.

20214smaga1

Giannini - Cross - Ms. Acosta-Pettyjohn

1 Q. Did you see any blood on him?

2 A. Maybe on the jacket, but no, not -- not like on his skin.
3 I just remember seeing like red -- I just remembering seeing
4 the red marks on his face. I don't see -- I don't remember
5 seeing blood like that, no.

6 Q. When you say maybe on his jacket, was he wearing a jacket
7 that day?

8 A. Yes. I believe so, yes.

9 Q. And did you notice any cuts on him?

10 A. Not -- not that I can remember, no.

11 Q. Did you notice if his clothes were disheveled?

12 A. Like -- yes. Yeah. Like -- yes.

13 Q. Can you explain what his clothes looked like when you saw
14 him.

15 A. Sorry. Like -- like what were they like? Sorry.

16 Q. Sorry.

17 So you said that his clothes look disheveled, correct?

18 A. Yes.

19 Q. Can you describe his physical appearance with his clothes?

20 A. Like they weren't ironed and pressed no more. They were
21 like -- it was evident he was tossed around or something, you
22 know. Like it wasn't -- it wasn't visit clothes. Everybody
23 goes down there with visit clothes all pressed and stuff. It
24 wasn't visit-room attire no more.

25 Q. And you testified that you heard screaming, correct?

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Giannini - Cross - Ms. Acosta-Pettyjohn

1 A. Yes.

2 Q. Did you note that anywhere in your affidavit?

3 A. Not -- no. Screaming. I just remember yelling, yes.

4 Q. When you say you remember yelling, was that yelling from
5 the officers who told you to move?

6 A. A little bit of both, yes. More like ah. That's what I
7 remember from -- like, other than the officers' words, I just
8 remember like ah. You know what I mean?

9 Q. And do you know who was saying ah?

10 A. Evidently it would be Nicholas because he's the only one
11 back there. We were in the waiting area.

12 Q. Did you witness Nicholas be assaulted?

13 A. No.

14 Q. When you were brought back around the corner, who brought
15 you back around the corner?

16 A. They didn't bring us around the corner. They just said go
17 sit the fuck down, go sit back down.

18 Q. Do you remember who told you to go sit back down?

19 A. One of the officers. It was -- it was an officer that
20 said it. I know that much.

21 Q. Do you know if it was any of these three officers here
22 today?

23 A. I can't say for certain, no. I can't say for certain.

24 MS. ACOSTA-PETTYJOHN: Give me one minute, your
25 Honor.

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Giannini - Cross - Ms. Acosta-Pettyjohn

1 THE COURT: Sure.

2 (Pause)

3 Q. After you observed Mr. Magalios balled in up in the
4 corner, did you report what you saw or heard to any correction
5 officer?

6 A. You don't do that, no. You don't do that.

7 Q. Did you report what you saw or heard to anyone?

8 A. Like as far as like authority, staff?

9 Q. Yes.

10 A. Not right until I went to see OSI, no.

11 Q. How soon after --

12 A. I believe I spoke with my mother on the phone, but -- you
13 said authority. Excuse me. I'm sorry.

14 Q. Did you report it to anybody who wasn't a DOCCS employee
15 or staff?

16 A. Yeah. I spoke about it with my mother.

17 Q. And what did you tell your mother?

18 A. I told her what happened.

19 Q. And how soon after the incident did you first speak to
20 Mr. Magalios?

21 A. Did I speak with Mr. Magalios?

22 MR. MILLER: Objection. No foundation for that
23 question.

24 THE COURT: Sustained. No foundation.

25 Q. After the incident, did you ever have a conversation with

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Giannini - Cross - Ms. Acosta-Pettyjohn

1 Mr. Magalios?

2 A. No.

3 Q. So when you wrote this statement, did you give it to
4 Mr. Magalios or you gave it to somebody else?

5 A. I went to the law library and gave it to the -- he helped
6 me write it because I don't really speak legalese very well.
7 So he helped me put it in better words, the law library -- I
8 wrote it out in my words and he helped me know how to put it so
9 it's proper, like the affidavit format.

10 THE COURT: The law librarian helped you?

11 THE WITNESS: Yeah.

12 THE COURT: Is that an inmate or a DOCCS employee?

13 THE WITNESS: Yeah, an inmate. And it's also a
14 civilian there as well, a notary public, a notary. She was
15 there, yeah.

16 THE COURT: Okay. So somebody helped you -- somebody
17 in the law library helped you with the statement.

18 THE WITNESS: Like, yes.

19 Wait. Say that one more time

20 THE COURT: I'm sorry. I just wanted to clarify that
21 somebody in the law library helped you write the statement.

22 THE WITNESS: Not help me write the statement, like
23 they helped me re-- get the words to -- in the format, you
24 know.

25 THE COURT: It was your observations.

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Giannini - Cross - Ms. Acosta-Pettyjohn

1 THE WITNESS: Yes, yes. I want to make sure it's
2 clear. I don't want this to get misconstrued.

3 THE COURT: So nobody was putting words in your
4 mouth.

5 THE WITNESS: No, no one's putting words in my mouth.
6 They just helped me, you know, format it correctly.

7 THE COURT: Got it.

8 Q. And after you made this affidavit, who did you give it to?

9 A. I gave to I believe OSI and I believe I mailed it to a law
10 office.

11 Q. Do you know what law office you mailed it to?

12 A. No.

13 Q. Do you know why you mailed it to a law office?

14 A. I believe because it -- no, I don't know.

15 Q. Did somebody tell you to mail it to a law office?

16 A. No.

17 I'm trying -- I'm confused by this question right here.
18 Did somebody tell me to mail it to an office?

19 Q. Yes.

20 THE COURT: How did you know that you should mail it
21 to a lawyer?

22 THE WITNESS: Like they gave me advice that that's
23 what you do with the stuff. You don't put it in the system so
24 you don't have retaliation is what I'm trying to say.

25 Q. I understand that, but who told you to give it to the

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Giannini - Redirect - Mr. Miller

1 lawyer?

2 A. I'm not sure. I believe the law library clerks.

3 THE COURT: I'm sorry. How did you know what lawyer
4 to send it to?

5 THE WITNESS: It was the law library, the law
6 library.

7 Q. Sorry, Mr. Giannini. Just about one or two more
8 questions.

9 When you saw Mr. Magalios in the waiting room, did you
10 think he needed medical attention?

11 A. Yes.

12 Q. Did you tell Mr. Magalios that he should seek medical
13 attention?

14 MR. MILLER: Objection.

15 THE COURT: Sustained.

16 MS. ACOSTA-PETTYJOHN: No further questions,
17 Mr. Giannini.

18 REDIRECT EXAMINATION

19 BY MR. MILLER:

20 Q. Just a quick follow-up on the affidavit.

21 When you say legalese, like you don't know legalese, are
22 you referring to terms like I, Nicholas Giannini --

23 A. Yes.

24 Q. -- being duly sworn --

25 A. Yes. Exactly.

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1 Q. -- deposes and states that --

2 A. Yes. Exactly.

3 Q. Those aren't your words, right?

4 A. No.

5 Q. Is that what you mean by legalese?

6 A. Yes, sir.

7 MR. MILLER: No further questions.

8 You're free to sit in this courtroom now.

9 THE WITNESS: In this courtroom?

10 MR. MILLER: Yes.

11 THE COURT: Or you're free to go home.

12 MR. MILLER: Or you're free to leave, but I'm not
13 sure --

14 THE COURT: Well, there will be -- am I right that
15 there will be somebody to --

16 THE WITNESS: Escort me?

17 THE COURT: Take you out, yes.

18 Thank you, Mr. Giannini.

19 THE WITNESS: Yes. Of course, your Honor.

20 (Witness excused)

21 THE COURT: Anything else, Mr. Miller?

22 MR. MILLER: No, your Honor. At this time, the
23 plaintiff rests.

24 THE COURT: Ms. Acosta-Pettyjohn.

25 MS. ACOSTA-PETTYJOHN: Your Honor, I would just like

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1 to make my Rule 50(b) motion.

2 THE COURT: All right. Why don't we -- you've made
3 it and we'll argue it at the break.

4 MS. ACOSTA-PETTYJOHN: Sure.

5 THE COURT: And do you want to call witnesses?

6 MS. ACOSTA-PETTYJOHN: Yes, your Honor. I would like
7 to call Lisa Tibaldi.

8 THE COURT: All right.

9 (Pause)

10 MS. ACOSTA-PETTYJOHN: Sorry, your Honor.
11 Ms. Tibaldi had a question about the issue that you raised
12 earlier outside the presentation of the jury. Would I be able
13 to have a one-minute break to talk to her? Or I don't know
14 how --

15 THE COURT: All right. You know the ground rules.

16 MS. ACOSTA-PETTYJOHN: Yes, your Honor.

17 THE COURT: All right.

18 MR. MILLER: Your Honor, I object to this. She's
19 already been instructed and --

20 THE COURT: Hold on. Let's not have this
21 conversation in front of the jury.

22 I'm sorry, ladies and gentlemen, but I'm going to
23 have to ask you if you could go back into the jury room for a
24 couple of minutes. I thought we had taken care of all our
25 complications this morning, but apparently we haven't, so we'll

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1 take a short recess and Mr. Clark will come get you when we're
2 done. Sorry about that.

3 (In open court; jury not present)

4 THE COURT: Look, she's allowed to talk to whoever
5 she wants to. I don't think I can tell her, you know, that she
6 can't talk to Ms. Acosta-Pettyjohn or that you have to be
7 present, Mr. Miller.

8 MR. MILLER: I understand that, but she's already
9 been instructed on her legal rights and if that's something
10 that she wants to learn more about, I don't think
11 Ms. Acosta-Pettyjohn is the one qualified to answer any legal
12 questions like that.

13 THE COURT: I think Ms. Acosta-Pettyjohn understands
14 that, but let's let them have the conversation and see what the
15 question is. If the witness starts asking for legal advice,
16 then Ms. Acosta-Pettyjohn knows she can't give that. Maybe the
17 witness just wants to know what she's going to be asked. I
18 don't know. Maybe the witness wants to ask if
19 Ms. Acosta-Pettyjohn has ever heard of a witness in a civil
20 case being prosecuted for perjury. I have no idea.

21 But certainly, Ms. Acosta-Pettyjohn, you're not going
22 to be giving her any legal advice.

23 MS. ACOSTA-PETTYJOHN: Of course not, your Honor.

24 THE COURT: All right. And if I were you, for your
25 own sake, I wouldn't have this be a one-on-one conversation.

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1 MS. ACOSTA-PETTYJOHN: Of course, your Honor.

2 THE COURT: All right. You may go speak to the
3 witness if she wants to speak to you.

4 MS. ACOSTA-PETTYJOHN: Thank you, your Honor.

5 (Recess)

6 MS. ACOSTA-PETTYJOHN: We just spoke to Ms. Tibaldi.
7 She is no longer going to testify. She is scared for her
8 safety and would rather not testify because she doesn't know
9 what the consequences of testifying against Mr. Magalios will
10 be.

11 THE COURT: She's not concerned about her Fifth
12 Amendment? She's concerned about her safety? Well, that's
13 interesting.

14 You can still call her. She's here. But if you're
15 not going to, then that raises the question of what, if
16 anything, we do about the testimony that's already been
17 elicited in anticipation of her testimony.

18 I should let you know that one of the jurors, number
19 3, said something to Mr. Clark about whether the jury would
20 have an escort of some sort and Mr. Clark said I can't answer
21 that; if you have a concern, send a note to the Judge.

22 I guess I'm thinking out loud. Obviously, I'll hear
23 whatever you suggest. One thing I can do is say that testimony
24 about the threat was elicited in anticipation that Ms. Tibaldi
25 was going to testify. It's now been determined she's not going

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1 to. It has no -- therefore, I'm going to strike it. And there
2 was no association between that testimony and either the
3 plaintiff or the defendants, so the jurors should put it out of
4 their minds. And I guess can I also say the gentleman has left
5 the courthouse, if he has.

6 Did they go home?

7 MS. ACOSTA-PETTYJOHN: I believe -- I just saw -- I
8 believe they just left, your Honor.

9 THE COURT: Any thoughts on that?

10 MR. MILLER: I have some thoughts. I'm not about to
11 disagree. I just want to sort of maybe think out loud, as your
12 Honor is.

13 The reason why maybe you shouldn't strike that part
14 of Mr. Giannini's testimony is because I think it's important
15 for the jury to know the risk that this kid took.

16 THE COURT: Well, I guess what I could do is I could
17 say it's only to be considered for whatever effect it might
18 have had on his state of mind and his testimony because he --
19 although he warmed up as he went along, he clearly was nervous
20 at first. So I think you're right. I think it's perhaps
21 relevant to explain why he was a little freaked out at first,
22 but I'll make sure that the jury understands that there's
23 nothing about that threat that they should be holding against
24 either side. Seem fair?

25 MR. MILLER: I think that's a fair compromise.

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1 THE COURT: All right.

2 MS. ACOSTA-PETTYJOHN: Thank you, your Honor.

3 THE COURT: Thank you.

4 All right. Let's get the jury.

5 (Pause)

6 THE COURT: The juror did write me a note. A note
7 from juror number 3, Mike Ciraldo.

8 "I am now a little concerned about the events that
9 occurred prior to our entry to the court this morning. If it
10 is accurate that Mr. Giannini's life and Mr. Magalios' life was
11 threatened, can we be sure that the possibility of jury
12 tampering is out of the question? And I am surprised that,
13 given this prior incident directed at Mr. Giannini and
14 Mr. Magalios, that the ex-wife is still in the building and
15 able to testify.

16 "P.S. I did not discuss this note with any of the
17 other jurors."

18 Well, hopefully my instruction to them as a group
19 will put his mind at rest. And I think I won't mention to the
20 other jurors that we got a note.

21 Can we be sure the possibility of jury tampering is
22 out of the question. Well, I think the fact that this
23 individual is gone and isn't associated with either party
24 should put their minds at rest.

25 MS. ACOSTA-PETTYJOHN: Your Honor, I would just like

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1 to make an objection and just ask for a mistrial for prejudice
2 from juror number 3. He's clearly very concerned about any
3 events alleged or did not happen this morning and he's clearly
4 going to be concerned throughout the rest of deliberation and
5 trial, your Honor.

6 THE COURT: I mean, the concern I think he has is
7 that if he returns a verdict for plaintiff, he might be in
8 trouble with this boyfriend, so I would expect the application
9 to come from plaintiff, if anyone. But I don't -- what I'll do
10 is I'll give my instruction and if, at the break, anybody wants
11 me to speak individually to him, I'll do that.

12 MS. ACOSTA-PETTYJOHN: Thank you, your Honor.

13 THE COURT: And I certainly wouldn't -- a mistrial
14 certainly wouldn't be the remedy. It would be excusing juror
15 number 3. But let's see what happens.

16 We'll mark this note -- I guess the voir dire form
17 will be Court Exhibit 1 and this will be Court Exhibit 2.

18 (In open court; jury present)

19 THE COURT: Welcome back, ladies and gentlemen.
20 Sorry about that interruption.

21 You heard some testimony from Mr. Giannini about a
22 threat that was made to him by someone he understands to be
23 Mr. Magalios' ex-wife's new boyfriend. That testimony was
24 brought out in the expectation that the ex-wife was going to
25 testify. It now turns out she's not going to testify. You're

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1 to use that testimony only for a very limited purpose, which is
2 for whatever effect it might have had on the witness' state of
3 mind.

4 You also need to keep in mind that the individual
5 who's alleged to have made the threat is not associated with
6 any of the parties. He's not associated with the defendants.
7 He's not associated with the plaintiff. So any misconduct by
8 such a person should not affect your views of any of the
9 parties either way, and the only purpose for which that
10 evidence should be considered by you is for how it may have
11 affected Mr. Giannini in his manner of testifying.

12 So, with that, we will continue.

13 Oh, and I am told that both Ms. Tibaldi, the
14 plaintiff's ex-wife, and the new boyfriend have left the
15 building.

16 All right. Defendants may call their next witness.

17 MS. ACOSTA-PETTYJOHN: We would like to call Officer
18 Peralta to the stand.

19 MATHEW PERALTA, called as a witness in his own behalf,
20 having been duly sworn, testified as follows:

21 THE DEPUTY CLERK: Please have a seat.

22 You can take your mask off.

23 Please state your full name for the Court and spell
24 out your last name slowly.

25 THE WITNESS: Mathew Peralta, P-E-R-A-L-T-A.

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1 DIRECT EXAMINATION

2 BY MS. ACOSTA-PETTYJOHN:

3 Q. Good morning, Officer Peralta.

4 Are you currently employed?

5 A. Yes.

6 Q. And who are you employed by?

7 A. New York State DOCCS, Department of Corrections and
8 Community Supervision.

9 Q. And when did you begin working for DOCCS?

10 A. 2015.

11 Q. And what is your current title with DOCCS?

12 A. Correction officer.

13 Q. And has that always been your title since 2015?

14 A. Yes.

15 Q. And can you describe the duties and responsibilities of a
16 correction officer.

17 A. So motto of the department is care, custody and control.

18 We basically maintain -- maintain that for the inmates.

19 That's -- that's the basic -- that's like the basic grounds of
20 the job, make sure they report to their programs; make sure we
21 have live, breathing bodies; make sure for their care, you
22 know; make sure, if anything happens to them, we -- we respond
23 in an appropriate manner.

24 Q. And where are you currently assigned to? What facility?

25 A. Fishkill Correctional Facility.

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1 Q. And what type of facility is Fishkill?

2 A. It's a medium.

3 Q. And approximately how many inmates does Fishkill hold?

4 A. I don't -- off the top of my head, I couldn't give you an
5 exact number, but I could say probably more than a thousand,
6 less than two thousand.

7 Q. And were you employed at Fishkill on September 3rd, 2017?

8 A. Yes.

9 Q. And at that time, did you have any specific bid or post?

10 A. No. I was resource at the time.

11 Q. And can you explain what resource means.

12 A. So resource is generally you're at the leisure of the
13 chart sergeant. So wherever the department needs you is where
14 they fit you, wherever there's empty space, where they need an
15 officer.

16 Q. And are you currently assigned as a resource officer?

17 A. No. I currently have a bid.

18 Q. And what is a bid?

19 A. So a bid is -- you generally come in as a resource
20 officer. As time goes on, you could put in a bid, which is a
21 set post. So, you know, you -- from that day on, once you're
22 awarded that bid -- it usually goes by seniority. Once you're
23 awarded that bid, that's the post that you report to every day
24 until your bid changes. So you no longer would be going from
25 one place to another or you're no longer at the leisure of the

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1 sergeant to say today you're over here and tomorrow you have a
2 different location.

3 Q. And can you generally describe a day in the life of an
4 inmate at Fishkill.

5 A. So from an officer's standpoint, our shift starts at 6:30,
6 so we come in. That's when inmates have a count. They have to
7 stand up and make sure they're alive and breathing and make
8 sure everything's all right with them. From 6:30 to about 7,
9 that's when the count usually clears, which they're approved to
10 go to chow, which is the mess all. They walk off the unit.
11 They go to mess all. From the mess hall, they return back to
12 the unit. This is all escorted. From the mess hall, they come
13 back to the unit. Around 8:00, the walkway opens. The inmates
14 at that time report to their programs. If they don't have a
15 program, they're allowed to report to the yard. Once -- once
16 the program mod is over --

17 MR. MILLER: Your Honor, I would just object because
18 I believe he's referring to Monday through Friday, which I
19 think is irrelevant here.

20 THE COURT: Yes. I'm not clear on the relevance.

21 THE WITNESS: No, there's mods Monday through Sunday.

22 A. Mods is basically -- a mod is basically a --

23 THE COURT: Well, I'm still not clear on the
24 relevance. Why don't we talk about visits and how they work or
25 specific aspects that relate to what happened in this case.

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1 MS. ACOSTA-PETTYJOHN: Sure, your Honor.

2 Q. I'm going to turn your attention to September 3rd, 2017.

3 Did you have a specific post or assignment that day?

4 A. That day -- I didn't have a bid at that time, I was
5 resource, but I'm sure I had -- I was assigned to -- after the
6 deposition, I know I was assigned to visiting room 2.

7 Q. And before September 3rd, 2017, have you ever worked in
8 visiting room 2 before?

9 A. Pretty sure I have.

10 Q. And can you describe the duties and responsibilities of an
11 officer assigned to visiting room 2.

12 A. Okay. So visiting room 2 you have generally two officers.
13 Sometimes three. I'm not too familiar with the visit room, so
14 I don't know when they have three or two. But your basic
15 responsibility is to make sure there's no contraband being
16 passed, make sure visitors and visit -- and inmates are doing
17 what they're supposed to do, make sure conduct is maintained.
18 That's pretty much it.

19 Q. And do you recall who worked with you in visiting room 2
20 on September 3rd, 2017?

21 A. No, I don't.

22 Q. And can you describe the layout of visiting room 2?

23 A. So -- I haven't worked there in such a long time.
24 Visiting room 2, as soon as you walk in, there's -- there's a
25 desk lined up that generally has one table with two chairs.

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1 The officers usually sit in the back left. There's a little
2 podium with a chair on it. There's vending machines back
3 there.

4 Q. Do you know approximately how many inmates and visitors
5 can sit in that area?

6 A. No. I have no idea.

7 Q. Do you know if there's a limit on how long a visit can
8 last?

9 A. I don't think -- I believe there's not -- there's no limit
10 on the time frame of the visit.

11 Q. Are inmates and visitors free to start or end their visit
12 at any time?

13 A. Yes, as long as it's within the parameters of the visit
14 hours.

15 Q. Are there any rules or regulations regarding physical
16 touching between inmates and their visitors?

17 A. They're very basic. No prolonged kissing, touching.
18 Basically, you don't -- you can give a quick grasp, kiss, upon
19 your visit, upon arriving and leaving. Other than that, I'm
20 not too familiar with anything else.

21 Q. So a quick kiss is fine, correct?

22 A. Yes.

23 Q. And can an inmate be disciplined for kissing their
24 visitor?

25 A. They're generally told to -- if they're prolonged kissing,

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1 to stop. The next step from that would be a misbehavior
2 report.

3 Q. Have you ever issued a misbehavior report for prolonged
4 kissing?

5 A. No.

6 Q. Now, can you walk me through the process of how a
7 visitor -- sorry.

8 Can you walk me through the process of how an inmate
9 enters the visiting room.

10 A. Okay. So there's two sides to the frisk and strip area.
11 So when you first walk in as an inmate, when you're walking in
12 from the walkway, there's generally an officer there that wands
13 you with a hand scanner for metal and pats you down. There's
14 another officer sitting at the desk. Once that officer pats
15 you down and hand scans you with the wand for metal, you
16 approach the desk and, at that point, you would give that
17 officer your I.D. They'll log you in their book. From there,
18 you make a right down the hall, you make a left out the door,
19 walk up to the officers' station.

20 Q. And can you walk us through the process on how an inmate
21 would exit the visiting area.

22 A. So I don't remember a hundred percent. Like I said, I
23 haven't worked there in a long time.

24 When they're leaving the visit, they go through that door.
25 They would have to go to the officers' desk with the visitor

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1 and make sure that the visitor -- the visitor gets their pass,
2 I believe. They go through that door. Once they get to that
3 door, the officer in there has them have a seat and they have
4 to wait 'till their visitor leaves the premises. Once the
5 visitor leaves the premises, then they're allowed to continue
6 to be frisked, strip frisked. So they'll sit down on a bench
7 and wait until the officer tells them, hey, come up, basically,
8 because they can't -- they can't leave unless the visitor
9 leaves first. Once that happens, they'll go to the back --
10 they'll go down to the waiting area, make a left, and there's a
11 strip-frisk area. That's where they get strip frisked.

12 Q. And what happens after the inmate gets strip frisked?

13 A. If they have a package, they'll go to the package room.
14 Sometimes there's inmates there waiting for their packages as
15 well. So they continue out that -- that same -- they keep
16 going that same route. If they have a package, they'll sit
17 there and wait for a package; if they don't, they will pass
18 another officer. That officer will let them go through. They
19 come out the -- they'll make a right to leave the building and
20 walk onto the walkway. Once they get to the walkway, that's
21 where, if they live in the main building, they would make a
22 left and go down, or if they live like in 21 building, which is
23 another side of the jail, they would make a right and walk up
24 towards that way.

25 Q. And as they're walking through the walkway and going to

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1 their housing unit, are they escorted by anybody?

2 A. No.

3 Q. And as part of your duties as an officer in visiting room
4 2, are you also responsible for frisking inmates who exit the
5 visiting area?

6 A. No.

7 Q. On September 3rd, 2017, do you know if you conducted any
8 frisk or strip frisk at all?

9 A. I wouldn't have. I wouldn't be in a strip-frisk area.

10 Q. Why would you not be in the strip-frisk area?

11 A. Not my post. My post is the visiting room. Can't leave
12 the post unattended.

13 Q. What happens if you do leave the visiting room?

14 A. I could get written up by a sergeant and get what they
15 call an NOD, a notice of discipline. If anything happens in
16 the visiting room, I would be in big trouble as well.

17 Q. Do you recall on September 3rd, 2017 ever leaving your
18 post in visiting room 2?

19 A. No.

20 MR. MILLER: Objection. No foundation. He said he
21 didn't remember until the deposition that he was even assigned
22 there.

23 THE COURT: Well, that's a good question you can ask
24 on cross.

25 Q. Now, how many visiting rooms are there in Fishkill?

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1 A. There are two visit rooms. There's a third visit room for
2 SHU inmates. It would be noncontact visits.

3 Q. Are the visiting rooms connected in any way?

4 A. Yes. There's a little hall connecting visiting room 1 and
5 2.

6 Q. Can you describe the frisk area that the inmates go
7 through to enter and exit the visiting area.

8 A. Repeat that. I'm sorry.

9 Q. Sure.

10 Can you describe the frisk area, the layout of the frisk
11 area where the inmates go to enter and exit the visiting area.

12 A. The frisk area where they go to enter and visit -- the --
13 I'm sorry. The waiting area you want to know or --

14 Q. Sure. Describe the waiting area for me.

15 A. As soon as you walk through that door from the visit room
16 1, you have the benches to the left and to the right. If you
17 go to the right, there's a desk there with an officer, and if
18 you keep going down that hall where there's the waiting area,
19 you go to the -- all the way at the end of the hall, you make a
20 left, that's the strip-frisk area.

21 Q. When you go down the hall, I know you said you make a left
22 to the frisk area. Is there anything to the right of that
23 hall?

24 A. No. Nothing.

25 Q. I'm going to show you what's been marked -- or is in

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1 evidence as Defendants' Exhibits J1 through J9.

2 Officer Peralta, can you describe what we're seeing in
3 this picture?

4 A. So that right there is the -- all the way on the far back
5 corner where that gray door is at --

6 Q. Here?

7 A. Yes. Right there in front of it, it's really hard to see,
8 there's a desk there. That's where I believe a processing
9 officer would sit. If you make a left, there's -- there's a
10 doorway there with a door.

11 Q. Here?

12 A. Yes. If you make a left, that's where the inmates come in
13 from when they're coming from their unit to a visit. That's
14 where they would get pat frisked, wand with a metal detector.
15 That door to the right, very beginning of the picture, would be
16 the visit room, visit room 1. That's the entrance to it.

17 Q. Can you describe what this is, this white --

18 A. Those are -- they're like cubbies for net bags for
19 visitors.

20 Q. For?

21 A. For inmates. I'm sorry.

22 Q. I'm going to show you the second picture. Can you
23 describe what we're looking at here?

24 A. That is -- so where that desk was in that first picture,
25 that's just the opposite.

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1 Q. So it's this desk, correct?

2 A. Yes. That's just looking the opposite way towards that
3 door. You could see the door is on the left.

4 Q. So those would be the cubbies that you just described in
5 the first picture, correct?

6 A. Yes.

7 Q. And this door would be the door to exit or enter the
8 visiting area?

9 A. Yes. To exit -- to enter the visiting room 1.

10 Q. Okay. And what are we looking at here, Mr. Peralta?

11 A. That is the waiting area. The benches on the right and
12 the left, I believe.

13 Q. And what is this door to all the way back here?

14 A. I can't see. It's kind of a glare on the glass.

15 Q. Okay.

16 A. That looks like --

17 Q. Is that better?

18 A. Yes. That looks like the -- that's all -- that looks like
19 it's all the way at the end of the hall where the strip
20 frisk -- where it would go -- like on the opposite side of that
21 picture would be the strip frisk to the right, but you're
22 looking at the visit room door, visit room 1 door.

23 Q. So this would be the door that we saw in the first two
24 pictures?

25 A. Yes.

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1 Q. And to the visiting room?

2 A. Yes.

3 Q. And this you said was a waiting area, correct?

4 A. Yes, that's the waiting area.

5 Q. And then this would be what? What are we looking at in
6 this picture?

7 A. That's that same corridor. That's just all the way up in
8 the front of it. That's the visit room door.

9 Q. So, again, this picture is a just a closeup of the picture
10 we just saw before?

11 A. Yes.

12 Q. And what are we looking at here, Officer Peralta?

13 A. That is -- you would be standing in front of that door on
14 the opposite side. You're looking at the officers' station.

15 Q. Can you describe what this purple door is?

16 A. That's a kids' section. That's where the kids would
17 generally be from the visitors.

18 Q. And again, you said this desk? Is that the officers'
19 station?

20 A. Yes. That's the station where two officers sit.

21 Q. And again, this is the view you have when -- as soon as
22 you're on the other side of that visiting room door, correct?

23 A. Yes.

24 Q. Do you know -- over here seems to be like a little
25 hallway. Do you know what's down here?

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1 A. Before that wall or after it?

2 Q. I guess after the kids' play area. There's like a
3 little --

4 A. I believe vending machines. To the left, there's vending
5 machines.

6 Q. This picture, what are we looking at here?

7 A. That's a close-up of that picture, the officers' station.

8 Q. Okay. So this would be the officers' desk, right?

9 A. Yes. And in the background, that's the visiting room 1.

10 Q. Do you know how many officers sit at that desk?

11 A. I would imagine only two. It's not a big podium.

12 Q. And what are we looking at here, Mr. Peralta?

13 A. That's somebody standing on the podium taking a picture --

14 Q. And again, that --

15 A. -- of visit room 1.

16 Q. And that's the podium we just saw in the two previous
17 pictures, correct?

18 A. Yes.

19 Q. And this is, sorry, visiting room 1?

20 A. Visiting room 1, yes.

21 Q. Okay. What is this that we're looking at?

22 A. That looks like all the way in the back of visit room 1.

23 That's -- that's all the way in the back of visit room 1 facing
24 towards where that desk that -- the photo before just showed.

25 Q. Okay. So this is a view of somebody standing all the way

20214smaga1 Peralta - Direct - Ms. Acosta-Pettyjohn

1 in the back of the visiting room?

2 A. 1, yes.

3 Q. Okay. What are we looking at here?

4 A. That I believe is visiting room 1 still. I can't see it
5 so clear.

6 Q. Sorry.

7 A. That's fine like that. I'm just trying to think of how it
8 looks. I haven't worked there in a long time, so -- yeah, I
9 think that's the visiting room 1. On the left would be the
10 podium, but I don't think you can see it because of the pole.
11 You don't see it much. And on the right side would be that
12 corridor going to visiting room 2.

13 Q. When you say right side, you mean over here?

14 A. No. On the opposite side. Yeah, that side. That's where
15 the entrance --

16 Q. To my right?

17 A. Yeah.

18 Q. Okay. So this would be the hallway going to the visiting
19 room 2 over here somewhere?

20 A. Yeah. There's an entrance with a door there and that
21 would be the entrance to visiting room 2.

22 Q. So do you have to go through the visiting room 1 to go to
23 visiting room 2?

24 A. Yes.

25 Q. And what is this?

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1 A. That's that corridor that would be on the right side of
2 that picture going into visiting room 2.

3 Q. Do you know how long that hallway is?

4 A. Approximately 30, 40 feet.

5 Q. And I know it says visiting room 2 there. Once you get to
6 the other side of this hallway, is that the only way to go into
7 visiting room 2?

8 A. Yes. As an inmate, that would be the only way to come
9 into visiting room 2.

10 Q. And do you know what we're looking at here?

11 A. That is a photo of visiting room 2. That's all the way in
12 the back side of it.

13 Q. So this angle, is that the angle from the entrance that we
14 just saw in the picture before?

15 A. I believe so.

16 Q. Okay. So this would be the angle -- once you go through
17 the hallway, this would be the first thing you see?

18 A. Yes. As soon as you walk through that hallway, you look
19 back -- if you're looking down the hall, that -- that --
20 there's vending machines on the left.

21 Q. Over here?

22 A. Yeah. In the back corner. Then there's restrooms in the
23 back for visitors, I believe, behind that wall.

24 Q. Behind this wall?

25 A. Yes.

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1 Q. What are we looking at here, Officer?

2 A. That's the same view, but just on the other side of the
3 room, to the left side of the room.

4 Q. So we're still looking at the back of visiting room 2?

5 A. Yes, we're still looking at the back of visiting room 2.

6 Q. Can you describe what we're looking at here?

7 A. I can't even see the picture that clear.

8 Q. Sorry. Should I make it bigger or -- what would help?

9 If it would help, Officer Peralta, I believe next to you
10 is a binder that has exhibits in it. It's probably more
11 closeup pictures. You can go to Exhibit J and J7.

12 A. J7.

13 Q. Are you looking at what everyone is looking at on the
14 screen?

15 A. Yes.

16 Q. Okay. Can you describe what that picture is?

17 A. That looks like visiting room 2 still. On the left side
18 is the corridor to go back into visiting room 1.

19 Q. And when you say that, you mean this right here?

20 A. Yes.

21 Q. Okay. Can you describe what we're looking at now?

22 A. That is the noncontact visit. That would be where the
23 inmates with noncontact would go in there.

24 Q. Can you explain what that means.

25 A. They would have no contact with the visitor. So one

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1 inmate would be on -- the inmate would be on one side, the
2 visitor would be on the opposite side with the Plexiglass in
3 between them.

4 Q. And again, can you describe what we're looking at here?

5 A. That would be the strip-frisk area. So those -- those
6 booths on the right, that's where you would take an inmate to
7 get strip frisked.

8 Q. And can you describe -- I think it's like a little gate on
9 the left-hand side. Can you describe what that is?

10 A. Yes. That's the exit from the strip-frisk area. Right
11 before that there's a desk to the left. That's a package room.
12 That's where -- if a visitor brings a package in, that's where
13 the inmate would retrieve the package from. But that gate
14 right there is where a -- that's another post where the inmate
15 has to leave from. And if I'm not hundred percent -- I'm not
16 hundred percent sure. I believe the inmate would have to see
17 the officer there to leave.

18 Q. Past that gate?

19 A. Yes.

20 Q. And what are we looking at now, Officer Peralta?

21 A. That is that same corridor looking to the left side, those
22 are also strip-frisk room. Some days, if there is enough
23 officers and there's a large number of inmates, they would open
24 up those rooms and utilize them.

25 Q. And on this side, what would this be?

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1 A. That right side would be those strip-frisk booths.

2 Q. And those are the booths we just saw in the picture
3 before, correct?

4 A. Yes.

5 Q. Do you know what this is depicting?

6 A. That picture, I have no idea, to be honest.

7 Q. What about this picture here?

8 A. That's the strip-frisk area. That's the -- the opposite
9 side from where the gate is at. Those benches on the left
10 would be where the inmates would sit and wait for their
11 package. And the package room is on the right. Those doors on
12 the right side.

13 Q. So by the time an inmate got here, they would have already
14 passed the strip-frisk area?

15 A. Yes. Absolutely.

16 Q. I'm going to show you Plaintiff's Exhibit 6A.

17 Can you describe on this picture where the strip-frisk
18 waiting area would be.

19 A. Strip-frisk waiting area?

20 Can I just point out something wrong on the photo?
21 They're missing a desk and stuff.

22 Q. Well, let me rephrase my question.

23 Is this photo an accurate depiction of the layout of the
24 visiting room and the frisk area?

25 A. No. There's a couple things missing.

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1 Q. So please tell me what's missing.

2 A. There's a desk as soon as you walk -- it's in the photos
3 as well. As soon as you walk from the officers' station in
4 visit room 1, you walk through the door --

5 Q. Walk this way?

6 A. Yes.

7 Q. Okay.

8 A. On the right side, over to the right -- no, to the right
9 wall. In that same corridor on the right wall down.

10 Q. Here?

11 A. No. That same wall, but on the opposite side.

12 Q. This way?

13 A. No, no. That wall. Just go up on that wall.

14 THE COURT: Where the benches are?

15 THE WITNESS: No.

16 A. Right on the -- you see where that corridor is at?

17 Q. This door?

18 A. No. I'm sorry.

19 THE COURT: Why doesn't the witness step down.

20 Q. Officer Peralta, can you please step down.

21 THE COURT: Step down and tell us what you're talking
22 about.

23 MS. ACOSTA-PETTYJOHN: Yes.

24 Q. And just please speak a little louder because we don't
25 have a microphone over there.

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1 A. Okay. So this wall right here --

2 Q. Sorry. Can you step to the side a little bit so the jury
3 can see.

4 A. Sorry.

5 So this wall right here, there's a desk here with a phone.
6 This officer doesn't have a phone, so this is the phone they
7 utilize. So there's a desk and a phone here. So there would
8 be -- should be a square like that here.

9 THE COURT: All right. So the witness is indicating
10 the same hallway as the desk with three circles closer down
11 where the hallway turns into the wooden benches on the opposite
12 wall. That's where he's indicating there's a phone.

13 THE WITNESS: There's a table with a phone.

14 THE COURT: Okay.

15 THE WITNESS: I don't know what size. The size of
16 a -- a table there with a phone.

17 A. And that's the phone that the processing officer utilizes
18 when a visitor exits the visit room.

19 THE COURT: Keep your voice up.

20 THE WITNESS: Okay.

21 Q. And other than that, is there anything else missing from
22 this diagram?

23 A. I'm not -- I'm not too familiar with everything in the
24 visit room. But these are the bathrooms here.

25 Q. So the square right here is a bathroom?

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1 A. There would be a bathroom here. This is -- if this is
2 showing how many officers, there's no way four can sit on that
3 desk.

4 Q. Sorry. Officer, can you speak a little louder.

5 A. If the circles indicate officers, there's no way four
6 officers can sit on that desk. This podium is the size of a
7 school chair. There's only one chair there. If there's
8 another officer, they have to stand. That's about -- there's
9 no chairs here. As soon as you walk out this door, there's the
10 kids' section here. There's no chairs here. And I don't know
11 what this is, but I know there's no chairs here. That's the
12 area that you saw in the photos with the kids' section. And
13 then there's a walk-in. That's visit room 1.

14 Q. And so visiting room 1, would that be here?

15 A. That would be this whole area right here.

16 THE COURT: Indicating the upper left.

17 Q. And right in front of the processing officer, is there a
18 door or a wall or is that an open hallway?

19 A. That's an open hallway.

20 Q. Okay. Officer, you can have a seat.

21 And, Officer Peralta, on a weekend, how many inmates would
22 be in the waiting area of the frisk room at any time?

23 MR. MILLER: Objection.

24 THE COURT: Yes, sustained.

25 Q. Officer Peralta, when an inmate exits the visiting room,

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1 are they required to sit in a waiting room?

2 A. Yes.

3 Q. And in that waiting room, is it one inmate at a time, more
4 than one, or how does that process go with the waiting area?

5 A. No, those benches could be full.

6 MR. MILLER: Objection to form.

7 THE COURT: Overruled.

8 Q. And when you say full, approximately how many inmates can
9 sit there -- would sit there?

10 A. I mean, it's a pretty long bench, depending on how many
11 inmates leave -- decide to leave. They come and go as they
12 please. It's not -- they're never told that you have to leave
13 at this moment. So sometimes there's a lot of inmates back
14 there.

15 Q. And approximately how many correction officers would be in
16 that area?

17 A. I'm not too familiar with that area as far as staff-wise,
18 how many staff members would be there.

19 Q. Are you familiar with the route that an inmate would take
20 to go from the visiting area to housing unit 16-2?

21 A. Pretty familiar.

22 Q. Can you describe to us the route an inmate would take to
23 go from the visiting area to housing unit 16-2?

24 A. So --

25 MR. MILLER: Your Honor, the only reason I would

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1 object is I believe we've been through this a couple of times.
2 It's repetitive.

3 THE COURT: Yes, we have, but I think
4 Ms. Acosta-Pettyjohn can do it with at least one of her
5 clients. I'm not sure we need to hear it too many more times.

6 A. So when you exit the visit -- from the frisk area, the
7 strip frisk, or you want to know as soon as you walk out the
8 building.

9 Q. From the strip-frisk area.

10 A. So from the strip-frisk area, there's a post there manned
11 by an officer. That's where that gate was at in that photo.
12 They would pass that officer, exit the building. As soon as
13 they exit the building, there's another officer directly across
14 from the -- from the building. That would be walkway bravo.
15 That would be manned with an officer. If they're going down to
16 the main building, they would make a left. They would walk
17 down that walkway and there's -- down that walkway, there's
18 another walkway post. That would be walkway alpha. That's
19 manned by another officer. As soon as they get to the
20 building, there's a door to get into the building. You make a
21 left and there's an officer sitting right there. That's
22 another post. That's called walkway tunnel. Once they get
23 inside the building, I'm not familiar with that building
24 whatsoever unit-wise. I do know that they have to walk through
25 multiple housing units and to get to their units depending on

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1 what side of the building they're on. Every single one of
2 those posts are always manned. There's no way to not man those
3 posts because they have inmates on them. So they -- I mean,
4 unless everybody's neglecting their duty, they have to be
5 manned.

6 MR. MILLER: Objection. Move to strike.

7 THE COURT: Overruled.

8 Q. Now, prior to September 3rd, 2017, did you have any
9 interactions with Mr. Magalios?

10 A. No.

11 Q. And to your knowledge, prior to September 3rd, 2017, do
12 you know if there was any issues between you and Mr. Magalios?

13 A. No.

14 Q. And on September 3rd, 2017, did you have any interaction
15 with Mr. Magalios?

16 A. No.

17 Q. Do you recall exchanging any words with Mr. Magalios?

18 A. No.

19 Q. Do you recall if you ever complained to any DOCCS staff or
20 supervisor about Mr. Magalios?

21 A. No.

22 Q. Do you recall if Mr. Magalios was having a visit that day?

23 A. I don't -- I only know because of this deposition and
24 lawsuit. Other than that, I didn't even know.

25 Q. Do you know if you had any interaction -- withdrawn.

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1 Do you know who Officer Bailey is?

2 A. Yes.

3 Q. Who's Officer Bailey?

4 A. He's a co-worker.

5 Q. Do you know who Officer Blount is?

6 A. Yes.

7 Q. Who's Officer Blount?

8 A. Co-worker as well.

9 Q. And did you see Officer Bailey have any interaction with
10 Mr. Magalios on September 3rd, 2017?

11 A. No. I don't -- no.

12 Q. Did you see Officer Blount have any interaction with
13 Mr. Magalios on September 3rd, 2017?

14 A. No. Wouldn't know.

15 Q. Do you know -- or did you know where Officer Bailey was
16 posted that day?

17 A. Nope.

18 Q. Did you know where Officer Blount was posted that day?

19 A. Nope.

20 Q. Did you participate in any strip frisk that day?

21 A. No.

22 Q. And to your knowledge, did anything out of the ordinary
23 occur in the visiting room on September 3rd, 2017?

24 A. No. If anything would have occurred, there would have
25 been either a --

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1 MR. MILLER: Objection.

2 A. -- misbehavior report or a response.

3 THE COURT: Hold on. There's an objection.

4 What are the grounds?

5 MR. MILLER: I believe the question asked for a yes
6 or no and I move to strike anything after no.

7 THE COURT: Well, the question was did anything out
8 of the ordinary occur, so, yes, I guess the answer would be yes
9 or no. But if a witness' answer is not responsive, that's
10 really the objection of the questioner, not the other side. So
11 overruled.

12 Q. Sorry, Officer Peralta.

13 A. Can you repeat the question. I'm sorry.

14 Q. Sure.

15 Do you know if anything out of the ordinary occurred in the
16 visiting room on September 3rd, 2017?

17 A. No. And I only say that because if something out of the
18 ordinary would have occurred, there would have been a
19 misbehavior report following either that or a response and, at
20 that point, I would have done further paperwork and then a
21 to-from, which is what I did, and there was none, so no.

22 MR. MILLER: I move -- same. Move to strike that
23 last part of the answer.

24 THE COURT: Overruled. You can inquire when it's
25 your turn.

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1 MR. MILLER: Thank you.

2 Q. And, Officer Peralta, on what occasion would you be
3 required to write a to-from?

4 A. To-from is many things. It's just a basic form of
5 communication between you and a supervisor either responding to
6 something or requesting something.

7 Q. And on September 3rd, 2017, did you observe any DOCCS
8 employee threaten Mr. Magalios?

9 A. No.

10 Q. And on September 3rd, 2017, did you observe any DOCCS
11 employee become aggressive towards Mr. Magalios?

12 A. No.

13 Q. And on September 3rd, 2017, did you observe any DOCCS
14 employee assault Mr. Magalios?

15 A. No.

16 Q. Now, Mr. Peralta, did you know how housing units are
17 assigned to inmates?

18 A. Based on their programs. Every inmate is programmed. So
19 based on their program is where they'll be housed. So --

20 Q. And Officer Peralta, do you know if there's a clinic or
21 medical unit near the frisk area?

22 A. As soon as you leave the visit-room building, you make a
23 right. The medical unit's right there. So instead of making a
24 left on the walkway, you make a right. The medical unit's
25 pretty close.

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Peralta - Cross - Mr. Miller

1 Q. And do you know, if an inmate asks a correction officer to
2 speak to a sergeant, what does the correction officer have to
3 do?

4 A. Request a sergeant.

5 MR. MILLER: Objection to the form.

6 THE COURT: Try it again, Ms. Acosta-Pettyjohn.

7 MS. ACOSTA-PETTYJOHN: Sure.

8 Q. If an inmate had -- wants to speak to a sergeant and they
9 approach a correction officer, what would the procedure be?

10 MR. MILLER: Same objection.

11 THE COURT: What's the procedure?

12 Is there a particular procedure if an inmate
13 approaches an officer and says I want to speak to a sergeant?

14 THE WITNESS: Yes, there is.

15 THE COURT: Okay. What is it?

16 THE WITNESS: You hold the inmate there, you request
17 a sergeant, and you would wait until the sergeant arrives and
18 explain to the sergeant the situation.

19 MS. ACOSTA-PETTYJOHN: I have no further questions at
20 this time, your Honor.

21 THE COURT: Whenever you're ready, Mr. Miller.

22 MR. MILLER: Thank you.

23 CROSS-EXAMINATION

24 BY MR. MILLER:

25 Q. Good morning, Officer Peralta.

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Peralta - Cross - Mr. Miller

1 A. Good morning.

2 Q. Care, custody and control. That's a term you used during
3 your direct exam, right?

4 A. Yes.

5 Q. It's a term also used by Officer Pumarejo yesterday,
6 correct?

7 A. I believe so.

8 Q. That's a common term that correction officers use. It's
9 sort of like a term. It's terminology that's used. It's a
10 slogan, right?

11 A. The department's model; care, custody and control.

12 Q. Right.

13 Those words, the individual words, care, custody and
14 control, each one of those words have a real meaning to it,
15 right?

16 A. Yes.

17 Q. So let's talk about the word care.

18 Care means that you, as a corrections officer, have a duty
19 to ensure the safety of every inmate in a facility, correct?

20 A. Yes.

21 Q. And the word care means that you have a duty as a
22 corrections officer to ensure that an inmate is not assaulted
23 or abused by a fellow officer, correct?

24 A. Do you know the actual definition of it, though? I don't
25 know. I'm just asking.

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Peralta - Cross - Mr. Miller

1 Q. If you don't understand my question, let me know.

2 A. You can repeat it.

3 Q. You understood all the questions asked of your counsel,
4 right?

5 A. Yes.

6 Q. You didn't understand that last question?

7 A. No.

8 Q. Okay. Let's focus on that word, care.

9 A. Okay.

10 Q. Under that category, are you, as a corrections officer,
11 required -- is it your duty to protect an inmate when you see
12 him being assaulted or abused by a fellow officer?

13 A. Yes.

14 Q. You are required, as a corrections officer, to intervene
15 even if it's your buddy beating an inmate, correct?

16 A. If you could repeat that question.

17 Q. You are required to intervene when a correction officer is
18 beating an inmate even if that corrections officer is a friend
19 or a buddy?

20 A. Yes.

21 Q. Because prisons, unlike other places, don't have the
22 general population to witness what goes on in there, correct?

23 A. I don't understand what you're asking me.

24 Q. Let me break that down.

25 Inmates are not allowed to have i-Phones inside a prison,

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Peralta - Cross - Mr. Miller

1 correct? That's obvious.

2 A. Okay.

3 Q. Right?

4 A. Yes. They're not allowed.

5 Q. And so, therefore, unless there's cameras on the wall,
6 there is nothing to record what's going on inside the prison,
7 right?

8 A. There's cameras.

9 Q. I said if there are no cameras on the wall.

10 No one has access to videotape a corrections officer's
11 activity, right?

12 A. No, no.

13 Q. And you, as a correction officer, is aware -- you are
14 aware that whatever you do, whether it's right or wrong or
15 indifferent, no inmate, no civilian will have access to a phone
16 to videotape what you're doing, correct?

17 A. Could you rephrase that question. I don't understand what
18 you're asking me.

19 Q. You, as a corrections officer, know, you have knowledge,
20 that whatever you do inside that prison, whether it's right,
21 wrong or indifferent, no one can videotape what you're doing?

22 A. I don't think about that because I conduct myself in a
23 professional manner, so --

24 Q. I see. Now could you answer my question.

25 A. I'm -- I'm trying to. I need you to explain yourself.

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Peralta - Cross - Mr. Miller

1 Q. Should I repeat it?

2 A. Yes.

3 Q. You know, as a corrections officer, that whatever you do,
4 whether right, wrong or indifferent, an inmate or no one else
5 can pull out their phone and videotape your activity. You know
6 that, right?

7 A. If you're asking if I can be --

8 Q. You know that, right? Yes or no?

9 MS. ACOSTA-PETTYJOHN: Objection, your Honor.

10 A. I'm trying to answer your question.

11 THE COURT: Let the witness answer.

12 A. If you're asking me if anybody can record anything in
13 there, the answer is no.

14 THE COURT: The question is -- and I think this is
15 implicit, but he wants you to answer explicitly -- when you're
16 in the prison, you're aware that nobody can record you; are you
17 not?

18 THE WITNESS: I'm pretty sure everybody's aware of
19 that.

20 THE COURT: And including you?

21 THE WITNESS: Yeah. There's no phones. You can't
22 record anything.

23 Q. I'm sorry?

24 A. There's no phones. You can't record anything.

25 Q. And so no matter what you do, right, wrong or indifferent,

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Peralta - Cross - Mr. Miller

1 if there are no inmates around, other than one, then there's no
2 civilian witnesses to whatever you're doing, whether it's
3 right, wrong or indifferent, correct?

4 A. I still don't understand your question.

5 THE COURT: The question is if there's an interaction
6 between inmates and correction officers and nobody else is
7 present, then there's no outside witness to what's happening,
8 which I think --

9 THE WITNESS: There's generally --

10 THE COURT: -- is sort of obvious from the question,
11 but --

12 THE WITNESS: But there's no -- there's no -- there's
13 generally no way of seeing when somebody's going to pop up, so
14 I can't generally answer that question. Somebody can always
15 walk around the facility. There's free walking and escorted.
16 An officer could be going to his post. So I can't answer that
17 question generally because I --

18 THE COURT: No, but the question is if there's an
19 interaction between an officer and an inmate, there's no member
20 of the public who's present, correct?

21 THE WITNESS: There's no member -- there's no public
22 inside the facility. It's only inmates and officers.

23 THE COURT: I think we get it, Mr. Miller.

24 MR. MILLER: I think we get it as well.

25 THE COURT: And you can save the rest for your

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1 closing argument it.

2 MR. MILLER: Thank you.

3 Q. Now, the waiting area in the frisk room where those
4 benches are lined up opposite each other --

5 A. Okay.

6 Q. You know what I'm talking about, right?

7 A. Yes.

8 Q. There are no cameras in that area, are there?

9 A. I'm not too familiar with the area, but I believe not.

10 Q. And if an inmate -- I'm going to -- I'm showing you what's
11 in evidence as Plaintiff's 6A. We've looked at this before.
12 And you understand that this is the door heading into the frisk
13 area, right?

14 A. Yes.

15 Q. And you understand that this is --

16 A. That's the frisk waiting area.

17 Q. Yes. The strip-frisk waiting area.

18 A. Okay.

19 Q. But this is also the door that you enter into the visiting
20 area, right?

21 A. Yes.

22 Q. In other words, there's one door that leads into and out
23 of the visiting area and that's this door right here?

24 A. No.

25 Into the visiting area?

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Peralta - Cross - Mr. Miller

1 Q. Yes.

2 A. Where the visitors are? Because there's multiple doors to
3 enter the visit area, the visit frisk area.

4 Q. Okay. What is this door here?

5 A. To go into visit room 1.

6 Q. Okay. And to exit visiting 1 into the waiting area,
7 right?

8 A. Yes.

9 Q. So my question is, this area here where there are benches,
10 there were no cameras on the wall in this area, were there?

11 A. Like I said, I'm not a hundred percent sure of that area.
12 I don't believe so, but I don't know.

13 Q. Okay. And if one were to turn this corner and stand along
14 this wall over here, they cannot see the area of the benches,
15 correct?

16 A. You're asking me or are you telling me?

17 I've never stood on that corner.

18 Q. I'm asking you if that's correct.

19 A. I've never stood on that corner, so I couldn't tell you.

20 Q. So just so we understand your testimony, you can't tell us
21 whether or not, if someone is standing here, you don't know if
22 they could see in the area let's say where this X is over here?

23 A. I would assume not by the photo, but I've never -- I
24 personally can't answer that because I've never stood there.

25 Q. You can't tell me for sure that a person standing along

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1 that wall --

2 A. I've never stood there.

3 Q. -- can't see the area where the X is or where the benches
4 are?

5 MS. ACOSTA-PETTYJOHN: Objection, your Honor.

6 THE COURT: Sustained.

7 Q. Okay. Now, you said that you can't leave your post when
8 you're assigned to visiting room 2 because you'll get in
9 trouble from a sergeant, right?

10 A. Correct.

11 Q. And would it be fair to say that there were three officers
12 assigned to visiting 2 on September 3rd, 2017?

13 A. Don't remember.

14 Q. Do you remember if there were more than one?

15 A. Don't remember. I would assume there's more than one
16 officer in the visit room.

17 Q. Well, you heard the testimony yesterday of Officer Crystal
18 Pumarejo, right?

19 A. Yes.

20 Q. She admitted that she was assigned to visiting room 2 on
21 September 3rd. Did that refresh your recollection that she was
22 assigned to visiting 2 along with you?

23 A. No.

24 Q. And do you know if there was even a third officer assigned
25 to visiting 2?

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Peralta - Cross - Mr. Miller

1 A. Don't remember.

2 Q. In preparation for your deposition, as you've described,
3 you learned for the first time that you were assigned to
4 visiting room 2, correct?

5 A. Okay.

6 Q. That's your testimony, right?

7 A. That's what I said earlier, yes.

8 Q. Okay. Now, your deposition was on March 29th, 2021,
9 right?

10 A. Okay.

11 Q. Before that day, you didn't know that you were assigned to
12 visiting room 2?

13 A. Before that day?

14 Q. Before the deposition, you didn't know you were assigned
15 to visiting room 2?

16 A. I had to write a to-from based on that day.

17 Q. Okay. Did you answer my question?

18 A. When I was told to write the to-from, I -- I obviously was
19 notified that I was there that day.

20 Q. Okay. Now, you were notified of the incident on September
21 4th, right?

22 A. Okay.

23 Q. So, on September 4th, 2017, you knew you were assigned to
24 visiting room 2, correct?

25 A. I couldn't tell you what I remember on September 4th.

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Peralta - Cross - Mr. Miller

1 Q. Well, weren't you informed of the incident or the
2 allegations on September 4th, 2017?

3 A. Ask that question again.

4 Q. When did you first learn about these allegations against
5 you?

6 A. When I was asked to write a to-from.

7 Q. And when was that?

8 A. I don't remember off the top of my head.

9 THE COURT: Did you write the to-from on the same day
10 you were asked?

11 THE WITNESS: I don't know off the top of my head,
12 either. That doesn't work that way.

13 THE COURT: Maybe you can refresh the witness'
14 recollection.

15 MR. MILLER: Yes.

16 Got the glasses issue again.

17 Q. Do you have your deposition in front of you?

18 A. Where would it be located?

19 Q. If you can turn to page 9.

20 THE COURT: I don't know if he has it.

21 MR. MILLER: Oh. It's right there.

22 THE WITNESS: Thank you.

23 Q. Why don't you start at the bottom of page 8 and continue
24 on to the top of page 9 up until line 8. And just tell us if
25 that refreshes your recollection.

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Peralta - Cross - Mr. Miller

1 A. I need you to give me a minute. Can I find it first?

2 THE COURT: Just read it to yourself.

3 A. All right, but I need a minute before you start mentioning
4 numbers.

5 Q. Go ahead. Take your time.

6 (Pause)

7 A. Okay. What page was that?

8 Q. Why don't you turn to page 8.

9 A. 8?

10 Q. Yes.

11 A. Okay.

12 Q. Start at line 23 and go on to page 9, line 8. Read it to
13 yourself and look up when you're done, please.

14 A. 23 to line 8 on page 9?

15 Q. Page 8.

16 THE COURT: Page 8, line 23. Start there and keep
17 reading 'till the next page at line 8.

18 THE WITNESS: Line 8. Okay.

19 (Pause)

20 A. Okay.

21 Q. Does this refresh your recollection as to when you were
22 informed about the allegations made by Mr. Magalios?

23 A. This is -- give me a -- ask your question again.

24 THE COURT: Does reading that refresh your memory as
25 to when you were notified of the allegations that Mr. Magalios

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Peralta - Cross - Mr. Miller

1 made against you? Does it jog your memory?

2 THE WITNESS: Okay. Yes.

3 Q. Okay. Why don't you tell us now when you were informed
4 about the allegations that Mr. Magalios made against you.

5 A. I was told to write a to-from on September 4th.

6 Q. What?

7 A. On September 4th.

8 Q. What year?

9 A. 2017.

10 Q. Okay. So let's just get organized.

11 A. Okay.

12 Q. On your direct examination, you said you learned about
13 your assignment at your deposition, which was four years later.
14 That was not true, correct? The truth is that you learned the
15 next day what the allegation was against you, right?

16 A. You just asked two different questions.

17 THE COURT: Yes. Why don't you --

18 A. You mentioned allegation and then you mentioned something
19 else. You asked two different questions.

20 THE COURT: Why don't you break that down,
21 Mr. Miller.

22 MR. MILLER: Okay.

23 Q. When you said that you learned where you were assigned at
24 the deposition in 2020, you said that's the first time you
25 learned that you were assigned to visiting room 2, right?

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Peralta - Cross - Mr. Miller

1 A. On a deposition? I was -- that's when I was notified
2 of -- I was notified must have been the day after or the next
3 day, so -- to write a to-from. So I don't understand your
4 question. We're told to write to-froms in the facility.

5 Q. Okay. Let's focus on the next day. You were informed --

6 A. What day?

7 Q. Correct?

8 A. Next day from what day?

9 Q. September 4th, 2017.

10 A. Okay.

11 Q. You were informed that Mr. Magalios made an allegation
12 against you, correct?

13 A. Okay.

14 Q. I'm asking you if that's correct.

15 A. I would assume so.

16 Q. So the allegation that you learned against you was pretty
17 serious, right, in your eyes?

18 A. I would assume so.

19 Q. Would you assume that assaulting an inmate would be a
20 pretty serious allegation?

21 A. Yes.

22 Q. Would you also assume so that that is something that can
23 cause you to be criminally prosecuted?

24 A. Yes.

25 Q. And you would assume so that that is something that can

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Peralta - Cross - Mr. Miller

1 get you disciplined or fired from your job?

2 A. Yes.

3 Q. So when you learned about these allegations on September
4 4th, 2017, didn't you then say, wait, what happened yesterday?
5 Who was I working with? Who are my witnesses? Did you ask
6 yourself any of those types of questions on September 4th,
7 2017?

8 A. No.

9 Q. Did you go to Officer Pumarejo and say, hey, you know, I
10 was just accused of assaulting somebody yesterday, like did you
11 hear about this or did you discuss it with her?

12 A. No. I -- I -- no.

13 Q. You didn't?

14 And, in fact, there was a third officer assigned to
15 visiting 2 on September 3rd, 2017, correct?

16 A. I don't know.

17 MR. MILLER: I'm going to mark this item as
18 Plaintiff's 15 for identification.

19 May I approach the witness?

20 THE COURT: Yes.

21 Q. Take a look at 15 for identification and look up after
22 you've reviewed it.

23 (Pause)

24 A. Okay.

25 Q. Have you reviewed Plaintiff's 15 for identification?

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Peralta - Cross - Mr. Miller

1 A. That's what this is, yes.

2 Q. And does that item refresh your recollection with regard
3 to who was assigned to visiting room 2 on September 3rd, 2017?

4 A. No.

5 Q. Okay. Is that a logbook for the visiting room for
6 September 3rd, 2017?

7 A. It's a logbook. I don't know what it's for. I -- it's a
8 logbook entry.

9 Q. For what date?

10 A. For September 3rd, 2017.

11 Q. And for what area?

12 A. It doesn't state the area.

13 Q. Well, look at it more carefully. Do you see your name
14 there?

15 THE COURT: Well, it's not in evidence, so the
16 witness can't read from it.

17 Q. Tell me if you see your name.

18 A. Yes.

19 Q. And does it say what you're assigned to?

20 A. Yes.

21 Q. So is that the logbook for the visiting room for September
22 3rd, 2017?

23 A. I don't know what logbook this is.

24 MR. MILLER: Your Honor, I move it into evidence as
25 Plaintiff's 15.

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Peralta - Cross - Mr. Miller

1 MS. ACOSTA-PETTYJOHN: I object, your Honor.

2 MR. MILLER: It was provided in discovery.

3 MS. ACOSTA-PETTYJOHN: I understand that, but this
4 witness can't testify as to what logbook this is coming from.
5 He didn't write -- he didn't testify as to him entering any
6 entries in this logbook or where this logbook came from, who
7 wrote those entries.

8 THE COURT: Counsel should confer because if this is
9 something that the State produced, I don't know why we're
10 having this difficulty.

11 This witness can't authenticate it, that's true, so
12 you should confer at the break, and if you need to get a
13 custodian of records from DOCCS to come in and authenticate it,
14 I'm sure Ms. Acosta-Pettyjohn will supply someone.

15 MR. MILLER: May I confer with Ms. Acosta-Pettyjohn
16 for just five seconds?

17 THE COURT: Yes.

18 (Counsel conferred)

19 MR. MILLER: She said we'll talk during a break.

20 May I approach and take that item?

21 THE COURT: Yes.

22 (Pause)

23 Q. Just so we're clear, Officer, Plaintiff's 15 for I.D. that
24 you've just looked at does not refresh your recollection with
25 regard to your assignment and others who were assigned to

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Peralta - Cross - Mr. Miller

1 visiting room 2 on September 3rd; is that correct?

2 A. No. You asked -- you're asking me two different questions
3 again.

4 THE COURT: No. The question is does looking at that
5 exhibit refresh your memory -- does it jog your memory as to
6 who might have had the same assignment as you on that date.

7 THE WITNESS: No.

8 THE COURT: That's the answer, then.

9 Q. And it's your testimony that you don't know what this item
10 is?

11 A. I stated I know it's a logbook. I stated I don't know
12 what logbook it is.

13 Q. And in reading what's written here, you don't know what
14 logbook this is?

15 A. No.

16 Q. Okay.

17 Do you know an Officer Buckley?

18 A. Yes.

19 Q. And isn't it a fact that Officer Buckley and Officer
20 Pumarejo and Officer Peralta were all three of you assigned to
21 visiting room 2 on September 3rd, 2017?

22 A. Can't answer that question.

23 Q. Okay. Now what I want you to do is I want you to assume
24 that there will be testimony later in this trial stating that
25 those three individuals, Buckley, Pumarejo and yourself,

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Peralta - Cross - Mr. Miller

1 Peralta, were all assigned to visiting room 2. I want you to
2 assume that. Okay?

3 A. Okay.

4 Q. Now --

5 A. So you want me to assume something? So you want me to
6 imagine something? I'm trying to figure out what you want me
7 to do here.

8 THE COURT: He wants you to assume that you and those
9 two other officers were on duty in visiting room 2 on September
10 3rd. Just assume that.

11 THE WITNESS: Okay.

12 THE COURT: The jury obviously will not --

13 THE WITNESS: So this is not --

14 THE COURT: -- take it into account unless there is
15 in fact evidence to support it, but for purposes of the
16 question, you should assume that you were on duty with those
17 two other officers in that place on that date.

18 Q. Do you understand?

19 A. Okay.

20 Q. Okay. Now, with that assumption, wouldn't it be fair to
21 say that if you left your post, left that area over here,
22 visiting room 2 would still be attended to by those other two
23 officers?

24 A. You're asking me if it would be -- it would be attended to
25 by two other officers. I can't leave my post, so I don't

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Peralta - Cross - Mr. Miller

1 understand your question.

2 THE COURT: The question is if you did leave your
3 post, even though you weren't supposed to, wouldn't there be
4 two other officers still at that place.

5 THE WITNESS: If somebody was to leave that post when
6 there was three officers there, there would be two officers
7 there, yes.

8 THE COURT: So three minus one equals two.

9 THE WITNESS: Yes. The math --

10 THE COURT: I think we got the point.

11 Q. Okay. So earlier you said you can't leave your post
12 because it would be unattended. That's not true if there are
13 two other officers there, right?

14 A. It's absolutely true. Every officer --

15 Q. I'll move on.

16 Now, you said that if you left your post, which would be
17 here --

18 A. Okay.

19 Q. -- you would get in trouble by a sergeant, right?

20 A. Yes.

21 Q. But there was no sergeant assigned to the visiting room
22 that day, was there?

23 A. There's always a sergeant assigned.

24 Q. Who was the sergeant?

25 A. I don't remember.

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Peralta - Cross - Mr. Miller

1 Q. Was there a sergeant assigned to the visiting room?

2 A. Yes. There's always a sergeant assigned to the visiting
3 room.

4 Q. Would that assignment be in the logbook?

5 A. I don't know.

6 Q. Who was the sergeant assigned to the visiting room that
7 day?

8 A. You asked me that. I said no, I don't know.

9 MS. ACOSTA-PETTYJOHN: Objection, your Honor.

10 THE COURT: I'm told that the jurors' lunches have
11 arrived and it is that time, so let us take our morning break.

12 I know you guys already had a short, unexpected
13 break, but the court reporter and the lawyers have been going
14 since 9, so let's take our break and we will resume at 12:15.

15 Don't discuss the case. Keep an open mind.

16 And can I ask juror number 3 to stay behind for just
17 one second.

18 THE COURT: Mr. Ciraldo, can you stand by. You can
19 stay in your seat.

20 (In open court; Juror No. 3 present)

21 THE COURT: Hi. I just wanted to ask you about your
22 note.

23 As I told the whole jury, that little event had
24 nothing to do with any of the parties. The individual is gone.
25 From what I can tell, this is a personal beef among the

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Peralta - Cross - Mr. Miller

1 ex-husband and the new boyfriend, and I don't have any reason
2 to think that it would or should have any effect on a jury.

3 But I want to be sure that you can still be fair. Do you --

4 JUROR NO. 3: That I'm still what? Excuse me.

5 THE COURT: That you can still be fair.

6 JUROR NO. 3: Oh, be fair. Yeah.

7 THE COURT: Do you have concerns about your own
8 security that will affect you one way or the other?

9 JUROR NO. 3: I'm just connecting dots. Two people's
10 lives who were threatened. The boyfriend was, in my view,
11 obviously siding with the defendants, so --

12 THE COURT: I think it's probably more fair to say he
13 was siding against the plaintiff.

14 JUROR NO. 3: Okay. All right, all right. Fair
15 enough.

16 THE COURT: We don't have any reason to believe the
17 defendants had anything to do with this.

18 JUROR NO. 3: Fair enough. Well, if he's deciding
19 for one, then he's --

20 THE COURT: Right, right.

21 JUROR NO. 3: By deduction.

22 THE COURT: Yes.

23 JUROR NO. 3: You know.

24 THE COURT: So what are the dots that you've
25 connected?

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Peralta - Cross - Mr. Miller

1 JUROR NO. 3: Lives were threatened and I'm part of a
2 jury and I don't know that this cuckoo guy is not going to try
3 and tamper with the jury.

4 THE COURT: Well, I guess there's no absolutes in
5 life. I don't have any reason to think that that would happen.

6 JUROR NO. 3S: That's why I wrote the note.

7 THE COURT: But if you think that you're worries
8 about that situation are going to cause you to pull your
9 punches or to -- if it's going to affect how you view the
10 evidence or how you vote when the jury comes to deliberate, we
11 need to know that.

12 JUROR NO. 3: I have no thoughts about changing or
13 having that -- there are two things going on. There's security
14 and there's my fairness. I can still be absolutely fair;
15 however, given the circumstances of this morning, the security
16 component of my two -- two whatever -- narratives here is the
17 one that I'm concerned about. I'm not concerned about my
18 fairness quotient, if you will. I just hear stuff that's
19 really weird and scary and I have all of our security in mind.

20 That's my answer.

21 THE COURT: Well, all right. So if I understand you,
22 you're not going to let it enter into your thinking as to what
23 the verdict should be.

24 JUROR NO. 3: I am devoted to the evidence.

25 THE COURT: You're not going to say, oh, I better

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Peralta - Cross - Mr. Miller

1 vote this way because, if I don't, this crazy guy will come
2 after me or anything like that.

3 JUROR NO. 3: No, no. I'm devoted to the evidence
4 and the facts.

5 THE COURT: All right. Very good.

6 In terms of making you feel more secure here, I can
7 think of a couple of things I can do. One is have the court
8 security officers make sure, when it's time for you guys to
9 depart, that that couple has in fact left. And if you would
10 like somebody to escort you out, I can do that.

11 If you can think of anything else I could do to put
12 your mind at rest, I'm all ears.

13 I wish I could say I promise you nothing's going to
14 happen, but, you know, that doesn't happen in life, but I will
15 tell you from what I know about this situation, it is a
16 personal beef between the plaintiff and the new boyfriend and
17 the wife, you know, transferring her affections, and I don't
18 have any reason to think that this person would do anything.
19 But I've asked the marshal to look into it, and if I learn
20 anything more, I will take more steps.

21 JUROR NO. 3: Sure. You know, I reacted as a
22 concerned individual and for all of our safety. That was my
23 motive, and I'm satisfied with your explanation.

24 THE COURT: All right. Very good.

25 And I do appreciate that, as you noted in your note,

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Peralta - Cross - Mr. Miller

1 you didn't share your thoughts with the others.

2 JUROR NO. 3: I did not.

3 THE COURT: And when you go back, if they say, oh,
4 what was that about, just say nothing, can't talk about.

5 JUROR NO. 3: I'll say it's my lunch. Walter ordered
6 me the right lunch today.

7 THE COURT: You got a special lunch. Okay.

8 Thank you, sir.

9 JUROR NO. 3: Thank you.

10 THE COURT: We'll see you at 12:15.

11 JUROR NO. 3: Okay.

12 (Juror No. 3 left the courtroom)

13 (In open court; jury not present)

14 THE COURT: All right. Let's resume at 12:15.

15 (Luncheon recess)

16 (Continued on next page)

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Magalios v. Peralta - Jury Trial

AFTERNOON SESSION

12:15 p.m.

(Open court; jury not present)

THE COURT: While Mr. Clark is getting the jury, maybe, Ms. Acosta-Pettyjohn, we'll handle your motion.

Do you want to elaborate at all?

MS. ACOSTA-PETTYJOHN: Yes. Sorry, give me one second, your Honor.

I would just like to make my Rule 50B motion, and Defendants move on all claims with respect to all the Defendants as there has been no evidence from which a reasonable jury can conclude that Officer Bailey and Peralta assaulted Mr. Magalios and that Officer Blount, Bailey, and Peralta failed to intervene in this assault.

THE COURT: That motion's denied. The Plaintiff's testimony alone would suffice, but there's been ample corroboration as part of Plaintiff's case.

All right, let's get the jury and let's deal with the charge at the end of the day today. It should only take a few minutes since I think you only had one real dispute.

(In open court; jury present)

THE COURT: All right, welcome back, ladies and gentlemen.

Mr. Peralta, you can resume the stand, and we can continue with Mr. Miller's cross-examination.

Peralta - Cross - Miller

1 MR. MILLER: Good afternoon, everybody.

2 CROSS-EXAMINATION (cont.)

3 BY MR. MILLER:

4 Q. Good afternoon, Officer Peralta.

5 A. Good afternoon.

6 MR. MILLER: Your Honor, at this time I offer
7 Plaintiff's 15 marked for identification into evidence as
8 Plaintiff's 15.

9 THE COURT: Any objection?

10 MS. ACOSTA-PETTYJOHN: No objection, your Honor.

11 THE COURT: Plaintiff's 15 is received.

12 (Plaintiff's Exhibit 15 received in Evidence)

13 MR. MILLER: I believe there's going to be no
14 objection to Plaintiff's 16 going into evidence as well.

15 MS. ACOSTA-PETTYJOHN: No objection, your Honor.

16 THE COURT: Plaintiff's 16, whatever it may be, is
17 received.

18 (Plaintiff's Exhibit 16 received in Evidence)

19 MR. MILLER: It's a logbook, your Honor.

20 THE COURT: All right.

21 Q. Officer Peralta, the logbook page that you said you didn't
22 recognize, it's now in evidence, so I'm going to read it.

23 A. Okay.

24 Q. Okay?

25 THE COURT: You know, you could also put it on the

Peralta - Cross - Miller

1 screen so we could read along.

2 MR. MILLER: Okay.

3 Q. Now, I asked you this morning if this logbook refreshes
4 your recollection with regard to who else besides yourself was
5 assigned to visiting room 2 on September 3rd, and you said that
6 it didn't refresh your recollection, correct?

7 A. Yes.

8 THE COURT: Just so it's clear, is this 15 or 16?

9 MR. MILLER: This is 15, your Honor.

10 THE COURT: Okay.

11 Q. Do you see on this log where it says "tour 2, 9/3/2017"?

12 A. Yes, I do.

13 Q. And do you see where it says "visiting room number 2"?

14 A. I'm sorry, can -- do I have a copy of that? I can't see
15 that far.

16 THE COURT: Do you have a copy of it for the witness?

17 MR. MILLER: How's that?

18 THE COURT: All right.

19 A. Yes, I see visiting room 2.

20 Q. Okay. And could you state the three names assigned to
21 visiting room 2?

22 A. It looks like Buckley, Pumarejo, and Peralta.

23 Q. And Peralta refers to you, right?

24 A. Yes, I'm Peralta.

25 Q. And Pumarejo refers to the officer who testified

Peralta - Cross - Miller

1 yesterday, correct?

2 A. Yes.

3 Q. And Buckley refers to another correction officer assigned
4 to Fishkill, correct?

5 A. Yes.

6 Q. And Buckley is a male, correct?

7 A. Yes, Buckley's a male.

8 Q. Do you see anywhere on this log where there's a sergeant
9 -- oops? There we go.

10 Do you see anywhere on this log...where a sergeant was
11 assigned to the visiting room that day?

12 MS. ACOSTA-PETTYJOHN: Objection, your Honor.

13 THE COURT: Well, there's no foundation that a
14 sergeant's assignment would necessarily be in that document, so
15 --

16 MR. MILLER: Okay.

17 THE COURT: -- if you have such a foundation, you
18 should lay it.

19 MR. MILLER: Okay, thank you.

20 Q. Let's start --

21 MR. MILLER: Let me withdraw that question and ask
22 another one.

23 Q. Do you see over here at 9:45, Lt. Sawyer made his rounds
24 into the visiting area?

25 MS. ACOSTA-PETTYJOHN: Objection, your Honor.

Peralta - Cross - Miller

1 THE COURT: I mean...

2 MR. MILLER: I'm just asking if he sees it.

3 THE COURT: You're just asking if he sees that the
4 document says that?

5 MR. MILLER: Yes, that's correct.

6 THE COURT: Yes, go ahead.

7 A. I can see a lieutenant's signature. I don't know what
8 lieutenant that is.

9 Q. Okay, that's fine.

10 And would it be normal procedure for a supervisor to make rounds in
11 the visiting room, but not remain there during the entire tour?

12 A. I don't -- I can't tell you a supervisor's exact job.

13 Q. I'm sorry?

14 A. I can't tell you a supervisor's exact job description
15 because I'm not a supervisor, but a sergeant does make rounds
16 in the visiting room. Whether he stays there or not I couldn't
17 tell you. I don't know his job description.

18 Q. Okay. I, I think, I think what you're saying is a
19 supervisor makes rounds, but doesn't get assigned to that area
20 for the entire tour.

21 MS. ACOSTA-PETTYJOHN: Objection, your Honor.

22 THE COURT: If that's not what the witness is saying,
23 he'll say so.

24 A. I still don't understand your question. Does a sergeant
25 assigned to the visit room...so I'm not understanding.

Peralta - Cross - Miller

1 THE COURT: Is the sergeant who's assigned to the
2 visiting room...you're saying there is a sergeant assigned to
3 the visiting room?

4 THE WITNESS: Yes, there's a sergeant assigned to the
5 visit room.

6 THE COURT: And does he or she stay there all day, or
7 do they make rounds to various locations and come in and out?

8 THE WITNESS: I don't, I don't know what their job
9 description is, so I couldn't tell if you they're supposed to
10 make rounds or if they're supposed to stay there. I couldn't
11 tell you. I don't -- I don't have that knowledge. I'm not
12 privious {sic} to that knowledge.

13 Q. So earlier today, you took us on a tour of the entire
14 process of the visiting room and the frisk process and the
15 strip-frisk process and where inmates go and where they sit.
16 You had that down pretty good, right?

17 A. Yes.

18 Q. But you can't tell us if a supervisor is assigned to that
19 tour?

20 A. I answered your question; I said a supervisor is assigned
21 to that visit room. I don't understand your question, though.
22 You're asking me if a supervisor's assigned; I said yes.

23 Q. You understand there's a difference between someone making
24 rounds and someone being assigned, right?

25 A. In our type of work, somebody's assigned a post. That

Peralta - Cross - Miller

1 post is...whatever that job description is, so I don't under --
2 what you want to ask me is something totally different, so I
3 don't understand what you're trying to ask me. That's what I'm
4 trying to explain to you.

5 Q. Okay. Okay. Let's go to Plaintiff's 16 in evidence.

6 MR. MILLER: And, actually, your Honor, before I put
7 it on the screen, just to make it easier maybe for the witness,
8 I'm going to let him take a look at it close first?

9 THE COURT: That's fine.

10 Q. Just take a look at Plaintiff's 16 and let us know when
11 you're done (handing).

12 (Brief pause)

13 A. Okay.

14 Q. Now, Plaintiff's 16 is a logbook for the processing area,
15 correct?

16 A. That, that's what it says, yes.

17 Q. Okay, and as we here today this morning, you're very
18 familiar with the visiting room and the frisk room. The
19 processing area is where visitors come and go, correct?

20 A. The process area is where -- yes, where visitors come and
21 go.

22 Q. Okay. Now, that logbook is for the processing area,
23 correct?

24 A. Yes, that's what it says.

25 Q. And it has the name of the officers assigned to the

Peralta - Cross - Miller

1 processing area for tour 2 on September 3rd, 2017, correct?

2 A. Yes.

3 Q. And it also has the name of a sergeant assigned to the
4 processing area on September 3rd, 2017, correct?

5 A. It says "supervisor." Sergeant Buonato.

6 Q. Right.

7 A. Okay.

8 Q. So Sergeant Buonato was assigned to the processing area on
9 September 3rd, 2017; is that correct? According to the logbook
10 of course.

11 A. Like I said, I can't, I can't...you're asking me a
12 question that I can't answer because I don't think they're
13 assigned to a specific location. They're assigned per
14 building. As far as where they go, I don't know. I can't --
15 you asking me specifically if he was assigned to this specific
16 location. I, I don't know where he was assigned to.

17 Q. Okay.

18 MR. MILLER: May I approach and take the, the item?

19 THE COURT: Yes.

20 Q. This here is sort of a stamped template, right, where
21 someone fills in the assignments, right?

22 A. Yes.

23 Q. And right here, it says "supervisor," right?

24 A. Yes, it says "supervisor."

25 Q. And that's Sergeant Buonato?

Peralta - Cross - Miller

1 A. Yes, Sergeant Buonato.

2 Q. And could you tell us from your experience that this
3 indicates that Sergeant Buonato was assigned to the processing
4 area on September 3rd?

5 A. I...again, I don't -- I'm not -- I'm really not
6 understanding your question, so the sergeant is assigned a
7 building so he's the sergeant for that processing area, but
8 he's also sergeant for other locations.

9 THE COURT: When you say 'that building,' what do you
10 mean?

11 THE WITNESS: So the visit has multiple areas in it,
12 so you got visiting room 1, 2, 3. They all have -- they have a
13 sergeant that take -- that covers that building, so he's the
14 one that watches over that building.

15 THE COURT: So is it fair to say that he makes the
16 rounds within that building, he's not always in one room?

17 THE WITNESS: Yeah.

18 THE COURT: Okay.

19 Q. So, in other words, I believe there's been a description
20 earlier in this case that visitors need to walk from the
21 processing area all the way into the visiting room area,
22 correct?

23 A. Yes.

24 Q. And that's a long walk, right?

25 A. I've never done the walk; I couldn't tell you.

Peralta - Cross - Miller

1 Q. Do you know -- I mean, if you don't know, just let us
2 know.

3 Do you know if the processing supervisor, in this case Buonato, was
4 also assigned to cover the visiting room as well?

5 A. I don't know.

6 Q. Okay. Okay. And you don't recall seeing Sergeant Buonato
7 on September 3rd, 2017, right?

8 A. I don't recall.

9 Q. And so if you went from the visiting room 2 into the frisk
10 area, it's, it's likely that there was no sergeant there to see
11 you do that, right?

12 A. I don't understand your question.

13 THE COURT: It's another hypothetical.

14 A. I can't hypothetically answer that question because I did
15 not leave my post, so I don't, I don't understand your
16 question.

17 THE COURT: Well, the question is, if you had left
18 your post, would a sergeant necessarily have seen it, but I
19 think --

20 MR. MILLER: I can move on.

21 THE COURT: -- I think this is more argument and you
22 should save it for your closing argument.

23 MR. MILLER: Good.

24 Q. Now, you already said that you learned about this
25 allegation the next day, right? We already went through that

Peralta - Cross - Miller

1 before the break.

2 A. Okay.

3 Q. And you -- as a result of learning about this allegation
4 against you, you were required to write a to/from memo, right?

5 A. Yes, I was.

6 Q. And you wrote a memo to Sergeant Vantassell, right?

7 A. If that's what -- I don't...recall off the top of my head,
8 but if that's what the to/from was written to, then...

9 Q. Okay --

10 A. That's who I responded to.

11 (Off-the-record discussion)

12 Q. I'm going to show you Plaintiff's 10 that's in evidence,
13 and since it's in evidence, I'm going to put it right on the
14 screen, okay?

15 A. Okay.

16 Q. Do you recognize this item?

17 A. Yes.

18 Q. This is a to/from to Sergeant Vantassell from yourself,
19 right?

20 A. Yes, it is.

21 Q. And despite learning of these allegations on September
22 4th, the date of this memo appears to be September 29th. Is
23 that correct?

24 A. Yes, it is.

25 Q. So more than three weeks passed from the time that you

Peralta - Cross - Miller

1 first learned of these allegations until the time you wrote
2 this memo; is that correct?

3 A. Yes.

4 Q. And during that period of time, that was...nearly
5 twenty-four days, did you speak to anybody about these serious
6 allegations?

7 A. No. The supervisor asked me to write a to/from and I
8 wrote a to/from.

9 Q. Right, but the to/from was on September 29th. That wasn't
10 my question. My question was, between September 4th and
11 September 29th, did you speak to anybody about these serious
12 allegations.

13 A. I don't recall that time frame, but I would assume not. I
14 mean...I didn't --

15 Q. So somebody is accusing you of committing a crime. It
16 takes you twenty some-odd days to write your to/from and it's
17 your testimony that you didn't speak to anybody about it?

18 MS. ACOSTA-PETTYJOHN: Objection, your Honor.

19 THE COURT: Overruled.

20 A. So --

21 Q. Yes or no. Is that your testimony?

22 A. Repeat your question. I'm trying --

23 THE COURT: The question was somebody accused you of
24 submitting a crime, it takes you twenty-something days to write
25 your to/from, are you saying that you didn't speak to anybody

Peralta - Cross - Miller

1 about it in the interim.

2 THE WITNESS: From what I could recall, no. I don't,
3 I don't think I did.

4 Q. Did you speak to Officer Bailey about it?

5 A. I just said I don't know, I don't recall. I don't think I
6 did.

7 Q. You assume --

8 THE COURT: Just so it's clear, ladies and gentlemen,
9 you know, the word 'crime' has been thrown around, just so it's
10 clear, this is not about whether a crime has been committed.
11 This is a civil lawsuit, this is about whether the Plaintiff is
12 entitled to money damages.

13 MR. MILLER: Right, that's clear.

14 Q. In your mind, the allegations were serious enough where
15 there was a potential criminal prosecution, correct?

16 MS. ACOSTA-PETTYJOHN: Objection.

17 Q. And we stipulate that there was not. Is that correct,
18 sir?

19 THE WITNESS: Answer?

20 THE COURT: Yes, you can answer.

21 A. So as corrections officers we get accused of a lot of
22 things, so when we do these things like to/froms, I mean,
23 especially when it's something we didn't do...we write --

24 Q. It doesn't bother you.

25 A. I mean, I was accused of doing something I didn't do.

Peralta - Cross - Miller

1 Q. I want you to assume that Officer Bailey will testify that
2 he did speak to you during that period of time. Does that
3 refresh your recollection about whether or not you discussed
4 these allegations with Officer Bailey?

5 A. I don't recall that time frame; I couldn't tell you.

6 THE COURT: Again, ladies and gentlemen, there have
7 been some assumptions, some hypotheticals. I've told you that
8 the lawyers' questions aren't evidence. You'll need to wait
9 and see if there will be evidence of the facts that are
10 embedded in the question or the hypothetical.

11 Q. You were aware of the allegation on September 4th that you
12 assaulted Mr. Magalios, right?

13 A. I was aware of I was accused of doing something, yes.

14 Q. Of assaulting him, right?

15 A. I can't remember off the top of my head, but I know I was
16 accused of doing something.

17 Q. Let me, let me read part of your to/from. "At no time did
18 I search or assault the inmate in question."

19 When you wrote that, were aware that you were accused of assaulting
20 him?

21 A. Yes.

22 Q. Were you also aware that you were accused of saying to him
23 'I would kill you and get away with it, I get around, I know
24 where you live'? Were you aware of that accusation against you
25 by Mr. Magalios?

Peralta - Redirect - Ms. Acosta-Pettyjohn

1 THE COURT: At the time he wrote the to/from?

2 Q. At the time you wrote the to/from.

3 A. At the time I wrote the to/from, yes.

4 MR. MILLER: Officer Peralta, I appreciate your time.

5 THE COURT: Any redirect, Ms. Acosta?

6 MS. ACOSTA-PETTYJOHN: Yes, your Honor.

7 REDIRECT EXAMINATION

8 BY MS. ACOSTA-PETTYJOHN:

9 Q. Officer Peralta, you testified that if your post was
10 unattended, you would get in trouble and that even if there
11 were two correction officers on your post, if you unattended a
12 post, it's still considered unattended, correct?

13 A. Yes.

14 Q. Can you explain that?

15 A. Okay, so the way, the way the facility works it's called
16 job descriptions and the post is a individual post, so even
17 though you may work a location, there's posts for that
18 location, so there will be a number 1 officer, a number 2
19 officer, so if you still leave your number -- if you're number
20 2 officer and you walk off your post, you're still abandoning
21 your post because there's supposed to be two officers there.

22 Q. And I know there was some questions about superior
23 supervisors' assignments and sergeants' assignments. Do you
24 know how supervisors are assigned to any post or location?

25 A. No, I do not.

Peralta - Redirect - Ms. Acosta-Pettyjohn

1 Q. And you also testified about the date on your to/from.
2 Would there be any reason why a to/from is not written on the
3 day of an incident?

4 MR. MILLER: Objection as to form.

5 THE COURT: Well, why don't you ask about this
6 particular to/from and if he knows.

7 MS. ACOSTA-PETTYJOHN: Sure.

8 Q. You were shown your to/from which is dated, I believe,
9 September 29th, 2017 -- and do you happen to have it in front
10 of you?

11 A. Uh, no, I do not.

12 Q. One second.

13 (Brief pause.)

14 MS. ACOSTA-PETTYJOHN: May I approach the witness,
15 your Honor?

16 THE COURT: Yes.

17 Q. Okay, Officer Peralta, so the to/from that you wrote
18 regarding this case was dated 9/29/2017, correct?

19 A. Yes.

20 Q. And you testified that you were informed of the
21 allegations against you around September 4th, correct?

22 A. Yes.

23 Q. Would there be any reason why you wouldn't have written a
24 to -- this to/from on the day that you were informed?

25 MR. MILLER: Same objection.

Peralta - Redirect - Ms. Acosta-Pettyjohn

1 THE COURT: I think the objection is to would there
2 be any reason. How about what was the reason.

3 THE WITNESS: Okay, so when we're asked to write a
4 to/from, we bring it in the next day we come into work, so I
5 may have been on vacation, I may have been out sick for a
6 couple of days, I don't know the actual logistics of it, but
7 those are all possible reasons.

8 THE COURT: So you don't remember specifically why
9 there was the delay for this one?

10 THE WITNESS: No, I do not, but there's -- there
11 could be multiple reasons. I just don't know why.

12 THE COURT: Oh.

13 MS. ACOSTA-PETTYJOHN: Okay, I have no further
14 questions, Officer.

15 THE COURT: Anything else --

16 MR. MILLER: Nothing further. Thank you.

17 THE COURT: -- Mr. Miller.

18 You may step down, Officer Peralta.

19 (Witness excused)

20 THE COURT: Defendants may call their next witness.
21 Who's next?

22 MR. TURKLE: Your Honor, we'd like to call Reuben
23 Febus.

24 THE COURT: All right.

25 REUBEN FEBUS, called as a witness by the Defendants, having

Febus - Direct - Mr. Turkle

1 been duly sworn, testified as follows:

2 THE DEPUTY CLERK: Please have a seat. Please state
3 your full name for the Court and spell it out slowly.

4 THE WITNESS: My name is Reuben Febus. That's
5 R-E-U-B-E-N, last name is F-E-B-U-S.

6 THE COURT: Go ahead, Mr. Turkle.

7 MR. TURKLE: Thank you, Your Honor.

8 DIRECT EXAMINATION

9 BY MR. TURKLE:

10 Q. Mr. Febus, good afternoon. Are you currently employed?

11 A. Yes, I am.

12 Q. And by whom are you employed?

13 A. I am employed by the New York State Department of
14 Corrections & Community Supervision's Office of Special
15 Investigations.

16 Q. And how long have you been employed by DOCCS?

17 A. By DOCCS? Since 2010.

18 Q. And how long have you been assigned to the Office of
19 Special Investigations?

20 A. Since late 2015.

21 Q. You were assigned to the Office of Special Investigations
22 in September of 2017?

23 A. Yes, that's correct.

24 Q. Now, please explain for the jury what the responsibilities
25 are for the OSI investigator?

Febus - Direct - Mr. Turkle

1 A. So the Office of Special Investigation is tasked with
2 conducting fair fact-finding investigations to address
3 allegations that are received. The allegations can be various
4 types of allegations in nature.

5 The unit that I worked for is the Internal Affairs Division, and we do
6 pretty much everything from anything that's not narcotics or a
7 relationship, although we sometimes help with that. A large majority
8 of the cases that we do involve allegations of excessive force or uses
9 of force.

10 Q. Thank you.

11 Now, in 2017, what percentage of your caseload was an
12 investigation of allegations of inmate assaults?

13 A. Um, it's hard to say. If I had to guess, I'd say
14 somewhere between 60 and 70 percent.

15 Q. When I say inmate assaults, I mean assaults by corrections
16 officers on inmates. Is that --

17 MR. MILLER: Objection; it's irrelevant.

18 A. I would say at least --

19 THE COURT: I'll allow it.

20 A. -- 50 percent of my caseload.

21 Q. Now, how do you determine which allegations to
22 investigate?

23 MR. MILLER: Objection.

24 THE COURT: Yeah, now I think we're...getting a
25 little far afield. Let's hear about this case.

Febus - Direct - Mr. Turkle

1 MR. TURKLE: Okay.

2 Q. Did there come a time where you were tasked to investigate
3 allegations concerning an alleged assault that took place at
4 Fishkill Correctional Facility on September 3rd, 2017?

5 A. Uh -- this particular case, yes.

6 Q. And describe the circumstances under which you came to be
7 assigned to that investigation.

8 A. It came to me as any investigation does. We get assigned
9 a case from Albany and told what the allegation is, given the
10 basics of what has been reported, whether it be a complaint
11 letter or a loose transcript from a phone call, and then we're
12 told to investigate.

13 Q. Now, did your investigation include interviewing
14 witnesses?

15 A. Yes, it did.

16 Q. And did that include corrections officers?

17 A. Yes, it did.

18 Q. Did that include inmates as well?

19 A. Yes, it did.

20 Q. Did it include any civilians?

21 A. No, I don't believe so.

22 Q. Now, in your investigation, how many individuals did you
23 speak to who claimed to have actually witnessed an assault on
24 Mr. Magalios on September 3rd, 2017?

25 A. None.

Febus - Direct - Mr. Turkle

1 MR. MILLER: Objection; hearsay.

2 THE COURT: Well, did you interview Mr. Magalios?

3 THE WITNESS: Oh. Yes. But he --

4 THE COURT: So that would be one.

5 THE WITNESS: Uh, when he said 'witness,' I thought
6 that the indictment unrelated, but, yes, Magalios would be one.

7 THE COURT: Did you interview anybody who witnessed
8 the assault I think was how he put it.

9 THE WITNESS: To witness, no.

10 THE COURT: Well...the complainant says he observed
11 it, right?

12 THE WITNESS: He said he was the victim of it, but
13 yes.

14 THE COURT: Okay, nobody else is what you're saying.

15 Q. Well, did you interview anyone who could corroborate what
16 Mr. Magalios has said with regard an alleged assault on
17 September 3rd, 2017?

18 A. No.

19 MR. MILLER: Objection.

20 THE COURT: Yeah, sustained. The question and answer
21 are stricken.

22 Q. Did you interview anyone who claimed to have --

23 MR. MILLER: Same objection, your Honor.

24 THE COURT: Yeah, same ruling.

25 What's relevant is what evidence is presented in this

Febus - Direct - Mr. Turkle

1 courtroom at this trial. It doesn't matter if the OSI
2 investigation...was different.

3 Q. Mr. Febus, at the conclusion of your investigation, was
4 there a finding with regard to the allegations?

5 MR. MILLER: Your Honor, I would either ask for a
6 sidebar or just make a standard objection.

7 THE COURT: Yeah, it's not a hearsay problem, it's a
8 relevance problem, so I'm going to sustain the objection.

9 As I said, it doesn't -- what's relevant is what this
10 jury thinks of the evidence that's being presented here in
11 court. What other people might think about other things, at
12 least under 401 and 403, I'm going to exclude.

13 Q. Mr. Febus, do you recall with regard to your investigation
14 an allegation as to what time the alleged assault occurred?

15 MR. MILLER: Your Honor, same, same objection.

16 THE COURT: Well, if you're asking about prior
17 statements of Mr. Magalios, that's fair game, but you need to
18 make clear whether or not that's what you're asking.

19 Q. Mr. Febus, was there an allegation by Mr. Magalios as to
20 what time the alleged assaulted occurred?

21 A. Yes.

22 Q. And was there an allegation by Mr. Magalios that he spoke
23 to his wife some time on September --

24 MR. MILLER: Objection to form.

25 Q. -- 3rd, 2017?

Febus - Direct - Mr. Turkle

1 MR. MILLER: It's his witness.

2 THE COURT: Yeah, don't lead.

3 Q. What allegations, if any, were made by Mr. Magalios as to
4 whether or not he had spoke to his wife after the alleged
5 assault?

6 MR. MILLER: Objection to form.

7 THE COURT: Overruled. Let's just get there.

8 THE WITNESS: I'm sorry, am I answering that?

9 THE COURT: Yes.

10 THE WITNESS: Okay.

11 A. There was an allegation that a phone call was made after
12 the fact.

13 Q. And --

14 THE COURT: I want to be careful about the passive
15 voice here. We're talking about what Mr. Magalios said to you,
16 so tell us what he said, not, you know -- I think I know what
17 you mean, but when you say 'there was an allegation,' you gotta
18 make it clear by whom, so what you're being asked for is what
19 did Mr. Magalios say to you on that subject.

20 A. I don't remember the specifics of what was said and how it
21 was said, but in general, it was that after the alleged
22 assault, there was a --

23 MR. MILLER: Objection.

24 A. -- he called his wife.

25 THE COURT: Overruled.

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1 Q. As part of your investigation, were you able to confirm
2 what time Mr. Magalios spoke to his wife?

3 MR. MILLER: Objection.

4 THE COURT: Sustained. Let's just -- if there's
5 evidence on that subject, let's hear the evidence.

6 Q. Did you review any -- as part of your investigation, what
7 phone logs, if any, did you review concerning communications
8 between Mr. Magalios and his wife on September 3rd, 2017?

9 A. I reviewed phone records, I found there was a phone call
10 that was made approximately --

11 MR. MILLER: Judge, same objection.

12 THE COURT: Yeah, if there are documents, let's see
13 them; if there...but you can't get in through a witness the
14 contents of an out-of-court statement that's not in evidence.

15 Q. Now, I --

16 THE COURT: Unless you can point me to something in
17 801, 803, or 804.

18 Q. Mr. Febus, as part of your investigation, what timelines,
19 if any, did you create?

20 MR. MILLER: Your Honor --

21 THE COURT: Same --

22 MR. MILLER: -- this is all the same.

23 THE COURT: -- same ruling.

24 You're welcome to put in the underlying evidence, but
25 you can't elicit through this witness the contents of documents

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1 that are not in evidence unless you've got a basis under 801
2 through 804.

3 Q. Mr. Febus, what allegations, if any, did Mr. Magalios make
4 to you in the course of your investigation with regard to his
5 having reported the alleged assault to a DOCCS sufficiently?

6 A. He stated that he reported it when he got back to the
7 housing unit, to the officer that was working there, I don't
8 remember who the officer was off the top of my head, and then
9 he stated that he followed up with the sergeant on the
10 following shift.

11 Q. And approximately what time did he follow up with the
12 sergeant?

13 THE COURT: According to him --

14 MR. MILLER: What time did he say? Objection.

15 THE COURT: According to him what time did he say.

16 THE WITNESS: I don't remember what time he
17 specifically said. I remember the approximate time that was
18 documented by the sergeant.

19 THE COURT: Well, then...you don't know is the
20 answer.

21 Q. Did your investigation include any allegations by Mr.
22 Magalios's then wife --

23 MR. MILLER: Your Honor --

24 Q. -- concerning --

25 MR. MILLER: -- at this point, I don't want to sound

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1 annoying, but it's the same objection.

2 THE COURT: This question itself is not -- doesn't
3 call for hearsay, but the -- heh, the next one will,
4 so...sustained.

5 MR. TURKLE: I'll withdraw the question, and I have
6 nothing further for this witness.

7 THE COURT: Any cross-examination?

8 MR. MILLER: No.

9 THE COURT: You may step down, Mr. Febus.

10 (Witness excused)

11 MR. TURKLE: At this point, your Honor, I'd like to
12 call Correction Officer Bailey.

13 (Brief pause.)

14 TIMOTHY BAILEY, called as a witness by the Defendants, having
15 been duly sworn, testified as follows:

16 THE DEPUTY CLERK: Please state your full name for
17 the Court and spell out your last name slowly.

18 THE WITNESS: Timothy Bailey, B-A-I-L-E-Y.

19 THE COURT: Go ahead, Mr. Turkle.

20 MR. TURKLE: Thank you, Your Honor.

21 DIRECT EXAMINATION

22 BY MR. TURKLE:

23 Q. Good afternoon, Officer Bailey.

24 A. Good afternoon.

25 Q. Are you presently employed?

Bailey - Direct - Turkle

1 A. I can't hear you.

2 Q. Are you presently employed.

3 A. Yes.

4 Q. And by whom are you employed?

5 A. New York State DOCCS.

6 Q. And when did you first begin your employment with DOCCS?

7 A. 8/96.

8 Q. And do the math for me; how long have you been a
9 corrections officer for DOCCS?

10 A. Twenty-five years.

11 Q. And you're currently a correction officer, correct?

12 A. Say that again?

13 Q. You're currently a correction officer, correct?

14 A. Yes.

15 Q. And describe for the jury your duties and responsibilities
16 as a correction officer.

17 A. Care, custody, and control basically.

18 Q. And what do you mean by that?

19 A. The health and well-being of the inmates. It's oriented
20 towards the inmates, whatever they need, basically in terms of
21 health, medical, dental, vision...

22 Q. Now --

23 A. Well-being.

24 Q. Sorry. Let's turn your attention towards September 3rd,
25 2017. Did you work that day?

Bailey - Direct - Turkle

1 A. Yes.

2 Q. And what was your assignment that day?

3 A. Visiting room yard.

4 Q. And what are your responsibilities in visiting room yard?

5 A. To make sure that everyone's playing well with each other,
6 not fondling each other, hands are in appropriate places, hands
7 need to be seen. There's standing side by side, no standing in
8 front of each other. To that nature.

9 Q. What shift did you work that day?

10 A. My, my original shift is ten-thirty at night to six-thirty
11 a.m.

12 Q. And what shift did you work in the visiting room yard that
13 day?

14 A. Six-thirty to two-thirty.

15 Q. Now, prior to September 3rd, 2017, had you previously been
16 assigned to the visiting room yard?

17 A. Yes.

18 Q. Can you briefly describe for the Court the general layout
19 of the visiting room yard and the adjacent visiting rooms.

20 A. It's inside the L shape of the visiting room. It's, like,
21 maybe 300 by 200 feet. It has benches and it has picnic
22 tables. It has a big tree in the far left corner.

23 Q. Now, in September of 2017, were there rules and
24 regulations regarding physical touching between inmates and
25 their visitors?

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1 A. Yes.

2 Q. And what were those regulations?

3 A. The rules and regulations are posted up on the bulletin
4 board before they walk out into the yard, but, but they all
5 have them on their units on the bulletin board as well.

6 THE COURT: The question was what are the
7 regulations, what's the content of them.

8 THE WITNESS: There's, there's no...you know, there's
9 no fondling, you know, hands have to be seen, you know...basic
10 things like you cannot touch certain areas, you know...to that
11 point.

12 Q. When you say 'certain areas,' you mean certain bodily
13 areas, correct?

14 A. Certain body parts, yes.

15 Q. Now, when an inmate acts in an inappropriate manner during
16 a visit, is he disciplined?

17 MR. MILLER: Objection as to form.

18 THE COURT: Well, I'll allow it.

19 Ordinarily if somebody goes a little too far in the
20 kissing and hugging, what usually happens?

21 THE WITNESS: They're just given a warning.

22 Q. Have you ever issued a misbehavior report for somebody who
23 you felt was engaged in inappropriate touching?

24 A. No.

25 Q. Now, on September 3rd, 2017, did you go inside either of

Bailey - Direct - Turkle

1 the visiting rooms?

2 A. No. I didn't even know they were working.

3 Q. Were you stationed --

4 MR. MILLER: Your Honor, can I just get a
5 clarification on who 'they' would be?

6 A. I did not know Peralta was working.

7 Q. My question was, did you go inside either of the visiting
8 rooms on September 3rd, 2017.

9 A. I walked through visit, I walked through visit room 1 to
10 get to the yard.

11 Q. Okay. And for any other reason would you be inside the
12 visiting rooms?

13 A. If I go to the restroom or something like that.

14 Q. Now, in the visiting room yard, would you be stationed in
15 one place?

16 A. We're stationed under a overhang. It's two chairs there
17 and there's a ramp leading down the right side. To the left
18 side, there's four steps.

19 Q. Now, in performance of your responsibilities in the
20 visiting room yard, would you have occasion to walk around the
21 yard?

22 A. We make periodic rounds also depending on -- it's all
23 visible, but depending on how busy it is.

24 Q. Now, as of September 3rd, 2017, did you know Mr. Magalios
25 by name?

Bailey - Direct - Turkle

1 A. No. No.

2 Q. How did you come to learn his name?

3 A. About this to/from.

4 Q. Well, can you elaborate for us how you came to learn Mr.
5 Magalios's name?

6 A. We had to write a to/from stating -- you know, he said
7 that -- it was allegations made, so we wrote a to/from. At
8 that time I wrote to to/from, I still didn't know who he was.

9 Q. Well, did there come a time where somebody identified the
10 Plaintiff as Mr. Magalios?

11 A. This is, this is months, heh, months afterwards.

12 THE COURT: So you were asked to write the to/from
13 and you were told that an inmate had made an allegation, but
14 you didn't know who it was?

15 THE WITNESS: Um-um.

16 THE COURT: You have to say yes or no.

17 THE WITNESS: No.

18 THE COURT: So what -- sorry, I --

19 THE WITNESS: I didn't know.

20 THE COURT: What I said was correct?

21 THE WITNESS: Yes.

22 THE COURT: Okay. Sorry, I, I made that confusing.

23 Q. Now, looking back on September 3rd, 2017, do you recall
24 interacting with an individual who you later came to know as
25 Mr. Magalios?

Bailey - Direct - Turkle

1 A. Say that one more time.

2 Q. Yeah. On September 3rd, 2017, did you interact with an
3 individual whom you later came to learn was Mr. Magalios.

4 A. Yes.

5 MR. MILLER: Objection.

6 THE COURT: Overruled.

7 Q. And describe what occurred.

8 A. He was in the yard in the smoking section with his
9 ex-wife, and his ex-wife was standing in front of him, in front
10 of his -- leaning on his private area. He was draped over her,
11 hands in the crotch area, and I called over to him to separate,
12 side by side, watch your hands.

13 Q. How far from Mr. Magalios were you when you called out to
14 him to watch his hands?

15 A. Maybe 75 feet? Eighty feet?

16 Q. Now, after you called out to this individual whom you
17 later came to learn was Mr. Magalios, what was Mr. Magalios's
18 response?

19 A. They, they separated and they stood side by side.

20 Q. Now, what's the next thing you recall Mr. Magalios doing
21 on September 3rd, 2017?

22 A. If I'm not mistaken, um...I don't know, a little while
23 later he left.

24 Q. Did you have any further interaction with him on September
25 3rd, 2017?

Bailey - Direct - Turkle

1 A. No.

2 Q. Now, we've heard testimony that when an inmate leaves the
3 visit that they have to be strip-frisked and they go to the
4 strip-frisk area.

5 Have you heard that testimony while you've been in the
6 courtroom?

7 A. Yes.

8 Q. Now, as part of your duties on September 3rd, 2017, were
9 you responsible for strip-frisking inmates?

10 A. No.

11 Q. Did you conduct any strip-frisk on September 3rd, 2017?

12 A. No.

13 Q. Were you in the strip-frisk area on September 3rd, 2017?

14 A. No.

15 Q. Did you assist any correction officers in strip-frisking
16 any inmates on September 3rd, 2017?

17 A. No.

18 Q. Were you allowed into the strip-frisk area, into the area
19 where strip-frisks were conducted, on September 3rd, 2017?

20 A. Say that again?

21 Q. Were you allowed into the area --

22 MR. MILLER: Objection as to the word 'allowed.'

23 Q. -- where strip frisks were being conducted on September
24 3rd, 2017.

25 MR. MILLER: Objection.

Bailey - Direct - Turkle

1 THE COURT: Sustained.

2 MR. TURKLE: I'll rephrase it.

3 THE COURT: If you could lay a foundation.

4 MR. TURKLE: Yeah.

5 Q. Was it part of your responsibilities as one of the
6 officers in the visiting room -- in the visiting yard on
7 September 3rd, 2017, to go into the area where strip-frisks
8 were performed?

9 A. No.

10 Q. And why not?

11 MR. MILLER: Objection.

12 THE COURT: I'll allow it.

13 A. It's not my job.

14 Q. And what consequences might there be if you were to have
15 left your post?

16 A. Um, I get yelled at, disciplined, NOD, um...by Sergeant
17 Buonato.

18 Q. Now, prior to September 3rd, 2017, how well did you know
19 Mr. Magalios?

20 A. I didn't know him.

21 Q. Do you recall any interactions with Mr. Magalios prior to
22 September 3rd, 2017?

23 A. No.

24 Q. Did you ever exchange harsh words with Mr. Magalios?

25 A. No.

Bailey - Direct - Turkle

1 Q. Did you ever issue a misbehavior report to Mr. Magalios
2 prior to September 3rd, 2017?

3 A. No.

4 Q. Did Mr. Magalios ever curse at you?

5 A. No.

6 Q. Did Mr. Magalios ever threaten you?

7 A. No.

8 Q. To your knowledge, prior to September 3rd, 2017, did Mr.
9 Magalios ever issue a grievance against you?

10 A. Before that, no.

11 Q. Now, on September 3rd, 2017, do you know what assignment
12 Officer Blount had?

13 A. He's back there in frisk. I don't know what he does, but
14 he's, he's back there.

15 Q. In which frisk area?

16 A. I don't know. Heh, heh.

17 Q. Did you interact with Officer Blount at Fishkill on
18 September 3rd, 2017?

19 A. I don't recall, but I gotta walk by him and maybe he was
20 there. I gotta walk in through there. I don't, I don't know.

21 Q. To your knowledge, did Officer Blount interact with Mr.
22 Magalios on September 3rd --

23 MR. MILLER: Objection.

24 Q. -- 2017?

25 THE COURT: Did you witness any such interaction?

Bailey - Direct - Turkle

THE WITNESS: No.

Q. Do you know what assignment Officer Peralta had on September 3rd, 2017?

A. No, I did not see him on 2017.

Q. So --

A. September.

Q. So would it be fair to say that you didn't see Officer Peralta anywhere at Fishkill on September 3rd, 2017?

A. I didn't know him. I didn't know him at all. But I didn't see him, either. I didn't see Puma and normally I say hi to Puma. I didn't see her, either.

Q. And when you say 'Puma,' who are you referring to?

A. I don't, Puma...something.

Q. Are you referring to the --

A. The other officer.

THE COURT: The one who testified yesterday.

THE WITNESS: Yesterday, the one who testified yesterday.

Q. Do you know what time Mr. Magalios's visit ended on September 3rd, 2017?

A. No, I don't.

Q. Did you see Mr. Magalios after his visit ended?

A. Say that again?

Q. Did you see Mr. Magalios after his visit ended on September 3rd, 2017.

Bailey - Direct - Turkle

1 A. No.

2 Q. Did you see any DOCCS official interact with Mr. Magalios
3 after his visit ended?

4 A. No.

5 Q. To your knowledge, did Mr. Magalios undergo a strip-search
6 after his visit ended?

7 A. Every inmate goes through a strip-search period when
8 leaving the visit room.

9 Q. And were you in the strip-search area --

10 A. No.

11 Q. Did you participate in any strip-search of Mr. Magalios?

12 MR. MILLER: Your Honor, this is getting --

13 A. No.

14 MR. MILLER: -- repetitive, I object.

15 THE COURT: Yeah, I think we have been over this.

16 Q. To your knowledge, did anything out of the ordinary occur
17 in the strip-frisk area of Fishkill on September 3rd, 2017?

18 A. I did not hear anything over the radio. No.

19 Q. Did you observe -- did you witness Officer Blount in the
20 strip-frisk area on September 3rd, 2017?

21 A. No.

22 Q. Did you observe Mr. Magalios being punched by Officer
23 Peralta on September --

24 MR. MILLER: Again --

25 Q. -- 3rd, 2017?

Bailey - Direct - Turkle

1 MR. MILLER: -- getting a little repetitive, your
2 Honor. I object.

3 THE COURT: You didn't...I think the witness said he
4 didn't know of anything out of the ordinary, so that covers a
5 lot, but I'll allow that question.

6 Go ahead.

7 THE WITNESS: No.

8 Q. Did you observe Mr. Magalios being punched by any DOCCS
9 employee on September --

10 A. No.

11 Q. -- 3rd, 2017?

12 A. No.

13 Q. Did you witness any DOCCS employee threaten Mr. Magalios
14 on September 3rd, 2017?

15 A. No.

16 THE COURT: Let me see if I can short-circuit this.

17 MR. TURKLE: I'm done, your Honor.

18 THE COURT: Did you see Mr. Magalios anywhere but in
19 the yard that day?

20 THE WITNESS: No.

21 THE COURT: Okay.

22 MR. TURKLE: I have nothing further.
23 Thank you, Officer Bailey.

24 THE COURT: Okay.

25 Mr. Miller.

Bailey - Cross - Miller

1 CROSS-EXAMINATION

2 BY MR. MILLER:

3 Q. Good afternoon, Officer Bailey.

4 A. Good afternoon.

5 Q. You've been assigned to Fishkill since 1996?

6 A. Yes.

7 Q. Would it be fair to say that you and Sergeant Vantassell
8 have known each other for many years?

9 A. No.

10 Q. No? Did you hear his testimony yesterday about him
11 knowing you when he was a corrections officers?

12 A. Yes.

13 Q. So how many years were you guys co-corrections officers at
14 Fishkill?

15 A. I work nights, he works days; I never seen him.

16 Q. So you don't know the answer to my question?

17 A. No.

18 Q. Okay. Now, at some point, then Sergeant Vantassell
19 informed you of an allegation against you, right?

20 A. Yes.

21 Q. And you heard me ask these similar questions to Officer
22 Peralta. That was a day or two after September 3rd, correct?

23 A. I don't recall what day it was. I don't re, I don't
24 recall the day I wrote the...the to/from, either.

25 Q. Well, the to/from is in evidence.

Bailey - Cross - Miller

1 A. Okay.

2 Q. As Plaintiff's 11, and it states that you wrote the memo
3 to Sergeant Vantassell on September 23rd.

4 A. Hmm.

5 Q. Does that ring a bell?

6 A. It could be.

7 Q. Does it refresh your recollection?

8 A. Heh, heh, not at all.

9 Q. Okay. But in the interim, between the time that you were
10 informed of these allegations and the time that you wrote your
11 to/from memo, you spoke to Officer Peralta about these
12 allegations, right? Yes or no.

13 A. I didn't, no.

14 Q. Yes or no, did you speak to Officer Blount about these
15 allegations?

16 A. No.

17 Q. Do you have your deposition in front of you there?

18 A. No, I don't.

19 THE COURT: Do you have a binder that has a bunch of
20 tabs in it that says A through G? Do you have a binder with a
21 bunch of tabs in it, A through G?

22 THE WITNESS: Yeah.

23 Q. You were deposed --

24 THE COURT: There's two binders there. I think. One
25 of them says "Depositions" on the front?

Bailey - Cross - Miller

1 THE WITNESS: Yeah.

2 THE COURT: Okay. Can you find...at least in my copy
3 it's tab C.

4 THE WITNESS: I'm the second name, so I'm assuming
5 it's number two?

6 MS. ACOSTA-PETTYJOHN: No.

7 THE COURT: Just look at each tab and look at the
8 front cover and see whose name is on it.

9 THE WITNESS: Okay.

10 Q. Are you on your deposition?

11 A. Yes.

12 Q. You were deposed under oath on March 29th, 2021?

13 THE COURT: No, it can't be '21, can it?

14 MR. MILLER: Oops. Oh, I'm sorry, August 18th, 2020.

15 A. That's what it says, yes.

16 Q. Okay. I want you to just go to page 61 and read it to
17 yourself, and you can start at line 4.

18 (Brief pause.)

19 A. Okay.

20 Q. Did you read page 61?

21 A. Can I read it? The whole thing.

22 Q. Did you read it.

23 A. Oh.

24 THE COURT: Read it to yourself.

25 (Witness complies)

Bailey - Cross - Miller

1 Q. Just look up when you're done.

2 (Brief pause.)

3 A. Okay.

4 Q. Does page 61 refresh your recollection about whether or
5 not you spoke to Officer Peralta about these accusations? That
6 calls for a yes --

7 A. Yes.

8 Q. -- or no.

9 A. Yes.

10 Q. Okay, and is your recollection refreshed now that you did,
11 indeed, speak to Officer Peralta about these allegations when
12 you had to write your to/from memo?

13 A. A month later.

14 THE COURT: A month after the to/from or a month
15 after the accusation --

16 THE WITNESS: This is --

17 THE COURT: Hold on, we can't talk over each other
18 because of the court reporter.

19 THE WITNESS: Um-hum.

20 THE COURT: When you say 'a month later,' do you mean
21 a month after the accusation or a month after you wrote the
22 to/from? Or something else.

23 THE WITNESS: A month after I wrote the to/from. I
24 didn't know who he was.

25 THE COURT: No, the question is, the conversation you

Bailey - Cross - Miller

1 had with Officer Peralta, whatever it was, when was that in
2 relation to when you wrote the to/from.

3 THE WITNESS: About a month after.

4 Q. After the to/from.

5 A. Yeah.

6 Q. So if your to/from was written on September 23rd...

7 A. Um-hum.

8 Q. It's your testimony that you spoke to Peralta some time in
9 October of 2017?

10 A. Around, around there. I, I'm...vaguely -- yes.

11 MR. MILLER: Your Honor, may I read page 61?

12 THE COURT: Yeah, but I think you need to go through
13 page 62, line 4.

14 MR. MILLER: Yes.

15 Q. Officer Bailey, did you give these answers to the
16 following questions at your deposition dated August 18th, 2020?
17 And you were under oath when you gave this testimony, right?

18 A. Yes.

19 Q. And you were represented by Ms. Acosta-Pettyjohn at the
20 time?

21 A. Yes.

22 Q. Page 61, line 4:

23 "Question, have you discussed this case at all with
24 Officer Peralta?

25 "Answer, no, in the beginning I did.

Bailey - Cross - Miller

1 "Question, okay, when for the first time did you discuss
2 this case with Officer Peralta?

3 "Answer, I don't know. I don't remember.

4 "Question, when you say 'in the beginning,' what did you
5 mean by that?

6 "Answer, when we had to write a to/from. I don't know who
7 I asked who he is because I didn't even know him, and I ran
8 into him in the parking lot and I introduced myself to him.
9 And I said 'do you know anything about this' and he said no.
10 And I said they said that we beat him up, and that was it.

11 "Question, is that the only conversation that you've had
12 with Officer Peralta about either the incident of September
13 3rd, 2017, or this lawsuit?

14 "Answer, yes.

15 "Question, and that was just a brief conversation in the
16 parking lot?

17 "Answer, correct.

18 "Question, and about when did this conversation take
19 place?

20 "Answer, I don't remember, but I know it was in the year
21 2017."

22 Did you give those answers to those questions?

23 A. I sure did.

24 Q. Now, do you as you sit here today see or -- do you have an
25 independent recollection of this conversation with Officer

Bailey - Cross - Miller

1 Peralta?

2 A. It wasn't a conversation, it was in passing.

3 Q. I see.

4 A. That's all it was.

5 Q. Okay.

6 A. When he said no, I kept moving and I went to my car.

7 Q. I see, okay.

8 And then you wrote your to/from, right?

9 A. No. I wrote the to/from before.

10 Q. Okay. In your to/from, and it's in evidence...

11 A. Um-hum.

12 Q. You said "at no time did I speak to inmate Magalios on
13 September 3rd, 2017." Did you write that?

14 A. I sure did.

15 Q. You also discussed this case with Officer Blount, right?

16 A. I don't really remember. Blount...I don't really
17 remember. I don't see them. I work night -- at that time I
18 worked nights, they worked days.

19 MR. MILLER: Page 62, your Honor.

20 Q. Could you look at page 62 --

21 THE COURT: First see if you can refresh him.

22 MR. MILLER: Yeah, I'll do that first.

23 Q. Officer Bailey, on page 62, if you start...on line 9, read
24 line 9 maybe through line 17...

25 A. "Question, about Officer Blount" --

Bailey - Redirect - Turkle

1 THE COURT: No, to yourself.

2 Q. No --

3 THE WITNESS: Oh.

4 Q. -- read it to yourself. Five through 17.

5 THE COURT: You can read more if you want.

6 (Witness complies)

7 MR. MILLER: I'm sorry, your Honor, you're correct.

8 Q. You can go to page 63, line 7.

9 (Extended pause.)

10 Q. Tell me when you're done.

11 A. Okay.

12 Q. Okay, this calls for a yes or no.

13 A. Um-hum.

14 Q. Does reading pages 62 and 63 refresh your recollection to
15 the question did you discuss these allegations with Officer
16 Blount?

17 A. Yes.

18 Q. And you did speak to Officer Blount about these
19 allegations, correct?

20 A. Yes.

21 MR. MILLER: Thank you. No further questions.

22 THE COURT: Any redirect?

23 MR. TURKLE: Just very briefly, your Honor.

24 THE WITNESS: Um-hum.

25 REDIRECT EXAMINATION

Bailey - Redirect - Turkle

1 BY MR. TURKLE:

2 Q. Officer Bailey, do you recall what you said to Officer
3 Blount concerning the allegations?

4 MR. MILLER: Objection.

5 A. We didn't speak about it --

6 THE COURT: Hold on, there's an objection.

7 THE WITNESS: Oh, okay.

8 THE COURT: Sustained. It's the witness's own
9 statement.

10 Q. Officer Bailey, what did you say to Officer Blount about
11 the allegations?

12 MR. MILLER: Your Honor, the same objection.

13 A. It was that --

14 THE COURT: When there's an objection, you have to
15 wait for me to rule.

16 THE WITNESS: Well, I didn't hear.

17 THE COURT: When he stands up.

18 THE WITNESS: He's speaking so soft I can't hear.

19 THE COURT: Well, it's very important that you be
20 able to hear, so please let us know that --

21 MR. MILLER: Your Honor, I have to say, this is the
22 first time ever that anyone has told me they can't hear me. In
23 my life.

24 THE COURT: Just make sure you stand up when you're
25 objecting. If Mr. Miller stands up, it means it's objecting.

Blount - Direct - Turkle

1 You're trying to elicit your own client's out of
2 court statement? Sustained.

3 MR. TURKLE: I have no further --

4 THE COURT: Unless you want to point me to something
5 in 801 or 804.

6 MR. TURKLE: No, your Honor.

7 Thank you, Officer Bailey.

8 THE COURT: You can step down, Officer Bailey.

9 (Witness excused)

10 THE COURT: Defendants may call their next witness.

11 MR. TURKLE: We'd like to call Officer Edward Blount.
12 EDWARD BLOUNT, called as a witness by the Defendants, having
13 duly sworn, testified as follows:

14 THE DEPUTY CLERK: Please state your full name for
15 the Court and spell out your last name slowly.

16 THE WITNESS: My name is Edward Blount, B-L-O-U-N-T.

17 MR. MAGALIOS: What was that?

18 MR. MILLER: What did he do?

19 THE COURT: Did you say something, Officer?

20 THE WITNESS: No.

21 THE COURT: Are you sure?

22 THE WITNESS: No.

23 MR. MAGALIOS: Yeah, he did.

24 THE COURT: Don't testify from your seat, Mr.
25 Magalios.

Blount - Direct - Turkle

1 I thought I saw you say something.

2 THE WITNESS: I didn't say anything.

3 THE COURT: Okay.

4 DIRECT EXAMINATION

5 BY MR. TURKLE:

6 Q. Good afternoon, Officer Blount.

7 A. Good afternoon.

8 Q. Are you presently employed?

9 A. Am I presently what?

10 Q. Employed.

11 A. Yes, sir.

12 Q. And by whom are you employed?

13 A. New York State Department of Correctional Services &
14 Community...Community Services.

15 Q. Supervision, heh, heh.

16 A. Supervision.

17 Q. Are you a correction officer?

18 A. Yes.

19 Q. When did you begin working for DOCCS?

20 A. 2009.

21 Q. Where do you currently work?

22 A. Fishkill Correctional.

23 Q. And when were you first assigned to Fishkill Correctional
24 Facility?

25 A. 2015.

Blount - Direct - Turtle

1 Q. Now, let's turn your attention right to September 3rd,
2 2017. Did you work that day?

3 A. I believe I did.

4 Q. What was your assignment that day?

5 A. I had the desk in visit/frisk.

6 Q. And what shift did you work?

7 A. Tour 2.

8 Q. What were your duties in the frisk area on September 3rd,
9 2017?

10 A. My duties there are to fill out the logbooks, assign the
11 officers, um...do the um...heh. Excuse me, I'm sorry. I make
12 sure I give a call to the watch commander after we have all the
13 inmates accounted for.

14 Q. How many officers were assigned to the frisk area on
15 September 3rd, 2017?

16 A. I believe four.

17 Q. Now, describe for the jury what procedures inmates undergo
18 when they enter into the frisk area.

19 A. The inmates enter the frisk area from the back of
20 visit/frisk, they come up three stairs to a porch, they wait
21 there. An officer will tell them to proceed. They'll knock on
22 the door, they'll come in. They're in an area of approximately
23 seven by five, that they're told to face the wall, put their
24 hands on the wall where they're pat-frisked, and after they're
25 pat-frisked, they're scanned with a portable wand.

Blount - Direct - Turkle

1 After that is done, they put all their clothing back on as
2 to whatever they took off, jackets, whatever, so they can be
3 searched. They come in and they pass their passes and their ID
4 to the officer. They stand to the side of the wall. After
5 they're standing there waiting, the officer is logging them in
6 to the logbook and they're logging them into, I guess it's
7 the...a count sheet. Count pages actually. We put their name,
8 DIN number, housing unit, on these sheets of paper.
9 We hand the inmate their IDs, we keep the passes in a separate box, we
10 tell them to walk about 12 to 15 feet to the door, to the visit room,
11 wait at the yellow line, wait for the officer to call them up. Once
12 the officer calls them up, they're given their seating assignments.

13 Q. So where do inmates go when you're done processing them?

14 A. Excuse me, sir?

15 Q. Where do the inmates go when you've completed the
16 processing.

17 A. This -- um, the um...visit room officers gives them their
18 seating assignment. There's a door about four feet wide, eight
19 feet high. They go through the door and they wait at the
20 yellow line, and then they proceed after the officer tells them
21 to come up. They pass them their ID, the officer tells them
22 where they're gonna be seated at.

23 Q. So they go into the visiting room --

24 A. They don't -- they're in the visiting room. They're just
25 standing behind a yellow line.

Blount - Direct - Turkle

1 Q. Okay. Now, in September of 2017, what protocols, if any,
2 did DOCCS have in place with regard to physical touching
3 between inmates and their visitors?

4 A. Well, they're allowed to touch one another, but they're
5 just not allowed to have any prolonged kinds of, hugs, or
6 grappling or whatever, grinding, whatever they do. They're not
7 allowed to do that, but that's not done in my area.

8 Q. Okay.

9 A. Because there are no visitors allowed back there.

10 Q. And please briefly describe, because I know we've heard
11 testimony about this, the procedure an inmate follows when his
12 visit is over.

13 A. I didn't hear that question clearly.

14 Q. Just briefly describe for the jury the procedure that's
15 followed once an inmate visit is over.

16 A. Once the inmate's visit is over, the family member and the
17 inmate walk to the visit room podium. They receive a pass from
18 the visit room officer, the visitor. The inmates come back to
19 the door, they knock on the door. Then they can gently push
20 the door to come into visit/frisk.

21 If we tell them to wait outside for a few moments, they
22 have to wait outside for a few moments, but if we're free,
23 we'll let them come in, they'll go through another door
24 straight down. If they don't have a net bag, but generally
25 they do have a net bag, they'll pick their net bag up, they'll

Blount - Direct - Turkle

1 go directly back down and sit on the benches down there.
2 They'll wait to be called. Once we get a call from another
3 area that the visitor has left, we wrap their IDs and their
4 passes together, we walk it out and we put it in a black box at
5 the end of the corridor. After that is done, an officer...will
6 take the inmate out to strip-frisk. There are nine booths out
7 there. They go through a set of double doors. They can pick
8 whatever booth -- the officer picks whatever booth they want
9 them to go in.

10 Once that's completed, the inmate gets dressed, they go
11 and pick up their packages, they go out the package room door
12 adjacent to the package room door. They'll be on the walkway
13 at that time. Directly facing them will be bravo. Adjacent to
14 bravo, there would be a gym with two gym officers. There's one
15 officer in bravo post. Then they will proceed to their housing
16 unit areas.

17 Q. Now, within the visiting area, would there be supervisory
18 officials assigned to the visit, slash, frisk area?

19 A. Yes, sir.

20 Q. And can you tell us, not necessarily by name, the rank of
21 the officials who would be in the visit, slash, frisk area?

22 A. At any given time during the day there's a sergeant
23 available. There are also two captains, one lieutenant, and
24 probably the dep of security on weekends that have to make
25 passes through and sign logbooks in general.

Blount - Direct - Turkle

1 Q. Now, on September 3rd, 2017, did you know Officer Peralta
2 by name?

3 A. No.

4 Q. Did you --

5 A. I didn't know him.

6 Q. To your knowledge, was Officer Peralta assigned to the
7 strip-frisk area on September 3rd, 2017?

8 A. No.

9 Q. Do you know what assignment Officer Bailey had on
10 September 3rd, 2017?

11 A. No, I don't know.

12 Q. Did you see Officer Bailey in the strip-frisk area on
13 September 3rd, 2017?

14 A. No.

15 Q. Did you see Officer Bailey interact with Mr. Magalios on
16 September 3rd, 2017?

17 A. Interact with who?

18 Q. With Mr. Magalios.

19 A. No.

20 Q. Did you interact with Mr. Magalios that day?

21 A. Probably in the morning.

22 Q. Describe that interaction.

23 A. I took his pass --

24 MR. MILLER: Objection to the word 'probably.' It
25 means he's guessing.

Blount - Direct - Turtle

1 THE WITNESS: I'm not --

2 THE COURT: Well, do you remember specifically or are
3 you inferring from what your duties were that day?

4 THE WITNESS: I probably -- I took his ID in the
5 morning. If I had the desk, I took his ID and I took his pass.

6 THE COURT: So you're inferring from what your job
7 was --

8 THE WITNESS: That's correct.

9 THE COURT: -- that you must have done that.

10 THE WITNESS: Yes, ma'am.

11 THE COURT: Do you have a specific memory of it?

12 THE WITNESS: No, I don't.

13 THE COURT: Okay.

14 Q. Now, prior to September 3rd, 2017, did you interact with
15 Mr. Magalios?

16 A. Good morning, good afternoon, give me your ID, give me
17 your pass.

18 Q. Did you interact with Mr. Magalios in any area of Fishkill
19 other than in the visit/frisk area?

20 A. No.

21 Q. Did you ever exchange harsh words with Mr. Magalios?

22 A. No.

23 Q. Did you ever threaten him?

24 A. No.

25 Q. Did you ever issue Mr. Magalios a misbehavior report?

Blount - Direct - Turkle

1 A. No.

2 Q. Did Mr. Magalios ever threaten you prior to September 3rd,
3 2017?

4 A. According to him he has.

5 Q. Well, prior to September 3rd, 2017 --

6 A. No.

7 Q. To your knowledge, prior to September 3rd, 2017, did Mr.
8 Magalios ever...file a grievance against you?

9 A. No.

10 Q. To your knowledge, what time did Mr. Magalios's visit end
11 on September 3rd, 2017?

12 A. You're going to have to repeat that, I...

13 Q. To your knowledge --

14 THE COURT: Do you have a recollection of what time
15 Mr. Magalios's visit ended on September 3rd, 2017.

16 THE WITNESS: No, I don't.

17 Q. Did you see Mr. Magalios after his visit ended?

18 A. I don't recall him.

19 Q. Do you see any DOCCS employee interact with Mr. Magalios
20 after his visit ended?

21 A. Definitely not.

22 Q. Did you hear any verbal exchanges between a DOCCS official
23 and Mr. Magalios --

24 A. No, sir.

25 Q. -- after his visit ended?

Blount - Direct - Turkle

1 A. No.

2 Q. To your knowledge, following the visit, did Mr. Magalios
3 undergo a strip-search?

4 A. He would have had to have leaved {sic} the visit/frisk
5 area.

6 Q. Did you participate in a strip-search of Mr. Magalios?

7 A. No.

8 Q. Did you enter the strip-search area where the strip-search
9 was performed?

10 A. At some points during the afternoon, I -- or morning
11 whenever anybody's leaving, I probably would get up and check
12 to see who's out there.

13 Q. Do you recall performing any strip-searches that day?

14 A. I could have, but I can't be certain of that.

15 Q. Did you observe Mr. Magalios being punched by Officer
16 Peralta --

17 A. No.

18 Q. -- on September 3rd --

19 A. No.

20 Q. -- 2017?

21 Did you observe Mr. Magalios being punched by Officer Bailey on
22 September 3rd --

23 A. No, sir.

24 Q. -- 2017?

25 Did you observe Mr. Magalios being punched by any DOCCS

Blount - Cross - Miller

1 employee --

2 A. No.

3 Q. -- on September 3rd, 2017?

4 Did you observe Mr. Magalios being brought to the ground
5 by Officer Peralta?

6 A. No, sir.

7 MR. MILLER: Your Honor, this is getting repetitive;
8 I object.

9 THE COURT: Is it fair to say you didn't see any sort
10 of physical contact between Mr. Magalios and other DOCCS
11 employees after the time you admitted him to the visiting area?

12 THE WITNESS: No, ma'am.

13 MR. TURKLE: Then I have nothing further.

14 Thank you, Officer.

15 THE COURT: Go ahead, Mr. Miller.

16 CROSS-EXAMINATION

17 BY MR. MILLER:

18 Q. Good afternoon, Officer Blount.

19 A. It's Blount.

20 Q. Blount, okay. Good afternoon, Officer Blount.

21 A. Good afternoon.

22 Q. You just testified on direct that you never exchanged
23 harsh words with Mr. Magalios back at Fishkill, correct?

24 A. No, I -- no.

25 Q. Well, just ten minutes ago, didn't you just exchange harsh

Blount - Cross - Miller

1 words with him when you took the stand?

2 A. There's -- no.

3 Q. Are you denying that you said something starting with a B
4 to him?

5 A. No. Yes, I am denying that.

6 Q. Are you aware that speaking out of turn in a courtroom is
7 against the rules?

8 A. I'm aware of it now that you're saying that.

9 Q. But you're testifying that you didn't say anything to him
10 when you just took the stand?

11 A. I didn't say anything to him. If I did, something may
12 have just blurted out, but I did not direct anything to him.

13 Q. But you do understand that if you blurted something out,
14 you were breaking the rules, right?

15 A. I didn't -- I don't know the rules and I don't recall
16 saying anything to him.

17 Q. You've been sitting here for a number of days; you're not
18 aware that in a federal courtroom you're supposed to follow the
19 rules?

20 MR. TURKLE: Objection, your Honor; argumentative.

21 THE COURT: Yeah. Sustained.

22 Q. You said in your testimony that sergeants, lieutenants,
23 captains, deputy, superintendents, they all pass through the
24 visiting room, especially on weekends --

25 A. I said visit/frisk.

Blount - Cross - Miller

1 Q. Okay.

2 A. They do go into the visiting room, also, sir.

3 Q. And when they do that, do they sign their name that
4 they're --

5 A. Most --

6 Q. -- there?

7 A. -- of the time they do.

8 Q. May I finish my question?

9 When they do that, do they sign the log to indicate the time that
10 they, that they do that.

11 A. Sometimes they do, sir.

12 Q. Okay. So, for example...when the lieutenant made his
13 rounds at around maybe ten o'clock, he signed in, right?

14 A. Is that the frisk logbook?

15 THE COURT: What exhibit are we looking at?

16 MR. MILLER: This is the processing logbook.

17 A. I wouldn't know about that, sir.

18 THE COURT: What exhibit are we looking at?

19 MR. MILLER: This is, I believe, 16.

20 THE COURT: Okay.

21 Q. I'm just asking you, is this the type of signature you
22 would find in the logbook if a supervisor was making rounds.

23 A. I don't know what supervisor --

24 MR. TURKLE: Objection.

25 A. -- sign or how they sign in other areas. I know what they

Blount - Cross - Miller

1 do in frisk area. If that's not a frisk logbook, I can't give
2 you a definitive answer about that.

3 Q. So in the frisk room logbook, would the supervisor sign in
4 when he does his rounds?

5 A. Yes, sir. Supposably.

6 Q. I'm sorry?

7 A. It's not a definite. Sometimes they're in a rush, they
8 may miss it.

9 Q. So sometimes they don't do their job properly, correct?

10 A. It's not about --

11 MR. TURKLE: Objection.

12 A. -- doing their job properly, sir. It's about they may be
13 in a rush to get to another area, something may be happening,
14 that -- where they have to leave.

15 Q. Okay. Do you have a recollection of any supervisors going
16 through the frisk room on 9/3/2017?

17 A. I'm sure the sergeant would have had to come through by
18 probably eleven a.m.

19 Q. Okay. And what was the name of that sergeant?

20 A. Buonato.

21 Q. At about eleven, because he was assigned, as you know, to
22 the processing area, right?

23 A. He was assigned to building 13, processing...package.

24 Q. Okay.

25 A. Building 12.

Blount - Cross - Miller

1 Q. And so there might have been a time during the tour that
2 he would sort of make rounds through the frisk room area and
3 the visiting area, correct?

4 A. I just said that.

5 Q. And then he'd go back to the processing area, right?

6 A. I don't know where he goes after that.

7 Q. Okay. Who were you working with in the frisk room that
8 day?

9 A. Don't recall. I know I saw my name as the head and that's
10 it.

11 Q. Does the name Officer Colon ring a bell?

12 A. It rings a bell, but he probably was not assigned with me.

13 Q. I'm just asking you does the name Officer Colon ring a
14 bell.

15 A. It does ring a bell.

16 Q. Could you just describe what he looks like physically.

17 A. About five-six, male, Hispanic, short-cut hair, about 140,
18 150 pounds I would gather?

19 Q. And what about Officer Barto; are you familiar with him?

20 A. Who?

21 Q. Officer Barto.

22 A. Yes, I'm familiar with him.

23 Q. And was he assigned to the frisk room on September 3rd --

24 A. I can't recall.

25 Q. -- 2017?

Blount - Cross - Miller

1 A. I can't recall.

2 Q. Have you reviewed the frisk room logbook for that day in
3 preparation for your testimony?

4 A. I may have months ago, but if you're asking me whether or
5 not I recall their names being in the frisk book {sic} logbook
6 today, I can tell you no.

7 MR. MILLER: Just one second, your Honor.

8 (Brief pause.)

9 MR. MILLER: I'd like to have these two pages marked
10 for identification as Plaintiff's 17, and I'm going to, with
11 the Court's permission, hand it to the witness.

12 MS. ACOSTA-PETTYJOHN: I'm sorry, what page --

13 THE COURT: Make sure you show them to Ms.
14 Acosta-Pettyjohn.

15 MS. ACOSTA-PETTYJOHN: What page is it?

16 (Off-the-record discussion)

17 MR. MILLER: May I approach the witness?

18 THE COURT: Yes.

19 Q. Officer Blount, take a look at these two pages, will you,
20 and look up when you're finished.

21 (Extended pause.)

22 A. Okay.

23 MR. MILLER: I'm sorry, there's a third page.

24 Q. Officer Blount, I'm going to approach and just give you a
25 third page to that item (handing), so it's complete.

Blount - Cross - Miller

1 THE COURT: So there's three pages to Exhibit 17?

2 MR. MILLER: Three pages, yes.

3 A. Okay.

4 Q. Do you recognize those three pages?

5 A. Uh, they look like strip/frisk...I mean, visit/frisk
6 logbook.

7 Q. For what date?

8 A. Um, 9/3...

9 Q. What year?

10 A. Seventeen.

11 Q. And is this the log that's maintained by the officers
12 assigned to the frisk room?

13 A. Uh --

14 THE COURT: Are we talking about the pat-frisk or the
15 strip-frisk? Or both.

16 THE WITNESS: Strip-frisk.

17 Q. The --

18 A. It doesn't matter.

19 Q. It's the same room, right?

20 A. No, they're not the same rooms, but it's visit room -- the
21 frisk/visit room.

22 Q. Right.

23 A. I mean...I'm confused right now.

24 Q. Okay, let me, let me ask you another question.

25 A. You can repeat the question.

Blount - Cross - Miller

1 Q. Before I -- go ahead.

2 A. You can repeat the question.

3 Q. Okay.

4 Is this logbook maintained in the frisk room area by the
5 officers assigned to that area?

6 A. Yes, sir.

7 Q. Okay. And it indicates -- it would indicate the time that
8 an inmate goes through the area for his visit, correct?

9 A. Yes, sir.

10 Q. It doesn't indicate the time that the inmate leaves after
11 his visit, does it?

12 A. No, sir.

13 Q. Okay. And it also would indicate the officers assigned to
14 the frisk room on that day --

15 A. Yes, sir.

16 Q. -- correct?

17 A. Yes, sir.

18 MR. MILLER: Your Honor, I would offer these three
19 pages into evidence as Plaintiff's 17.

20 MR. TURKLE: No objection.

21 THE COURT: Received.

22 (Plaintiff's Exhibit 17 received in Evidence)

23 Q. Now...may I have it back, please?

24 A. (Handing).

25 Q. Thank you.

Blount - Cross - Miller

1 In looking at Plaintiff's 17, can you tell us who was
2 assigned to the frisk room area on 9/3/2017?

3 A. Officer Barto, Officer Colon. We were shorthanded that
4 day obviously.

5 Q. I'm just asking you for the names right now.

6 A. I just gave it to you.

7 Q. Say it again.

8 A. Officer Barto, Officer Colon.

9 Q. And yourself.

10 A. Yes.

11 Q. You've already described Officer Colon. Can you describe
12 Officer Barto?

13 A. Yes, sir. Um, white, about five-foot-five, about 160
14 pounds, probably in his forties.

15 Q. Now, you three officers performed pat-frisks upon inmates
16 entering the room that day, correct?

17 A. Yes.

18 Q. And, in fact -- let me go -- so everyone can see what I'm
19 talking about...it's sort of blocked off, but do you see the
20 last column here (pointing)?

21 A. Yes.

22 Q. And that last column would indicate the name of the
23 officer who is doing the frisk, correct?

24 A. Um...the pat-frisk, not the strip-frisk.

25 Q. No, I agree. We were talking about the pat-frisk.

Blount - Cross - Miller

1 A. It's the pat-frisk.

2 Q. And it looks like you were switching off, right?

3 A. Uh...no. Not at this time.

4 Q. Tell me what, tell me what that last column would
5 indicate.

6 A. The last column, the two officers that are doing the
7 pat-frisk, they do switch off. One does a wand or scanner, one
8 does a pat-frisk. By the time they're completed their
9 pat-frisk they're at the door, and I should have the IDs,
10 filling out the paperwork for them so they can go on their
11 visits.

12 Q. So it's your testimony that you weren't doing pat-frisks
13 because you were at the desk or the door?

14 A. I'm looking at the time and that was my handwriting.

15 Q. Okay, but I asked you weren't you guys, like, switching
16 off throughout the tour that day.

17 A. Not throughout the whole day. At a certain point, after
18 the eleven-thirty a.m., once the counts go up I'll get up and
19 I'll take a break, I'll come back and start doing the counts
20 over again, but we don't have the sheet anymore because that
21 had already gone up at eleven-thirty, so we don't need the
22 count sheets, we just log them in the logbook at that point --
23 after eleven-thirty a.m.

24 Q. Okay, I'm going to page 2 of Plaintiff's 16. Same column,
25 it's got your name there, right?

Blount - Cross - Miller

1 A. Yep.

2 Q. Does that mean you were doing pat-frisks and you were --

3 A. Probably.

4 THE COURT: You gotta let --

5 Q. Officer Blount --

6 THE WITNESS: Yes, I'm sorry, ma'am.

7 THE COURT: Just make sure for the sake of the court
8 reporter that you let the lawyer finish the question and then
9 give your answer.

10 THE WITNESS: Yes, ma'am.

11 Q. So does this page indicate that you guys were switching?

12 A. Yes, sir.

13 Q. Switching around?

14 A. Yes.

15 Q. Okay, now...other than the three officers who you've
16 named, including yourself, were there any other officers
17 assigned to the frisk room on September 3rd?

18 A. No, sir.

19 Q. So, therefore, when inmates are done with their visit and
20 they...come through this door, it's the same three officers who
21 would be doing the strip-searches, right?

22 A. Basically.

23 Q. Well, basically --

24 A. Yes.

25 Q. -- the answer should be yes, right?

Blount - Redirect - Turkle

1 A. Yes.

2 Q. Thank you.

3 A. You're welcome.

4 Q. Okay.

5 A. Heh, heh, heh.

6 Q. Now, let's go back to Plaintiff's 16. Does Plaintiff's 16
7 indicate to you the time that Mr. Magalios entered the frisk
8 room?

9 A. Well, what it indicates to me if he's saying that he left
10 at one a.m., it means that I was still at -- or nine-thirty...I
11 can't see that.

12 MR. MILLER: Can Counsel stipulate --

13 A. 9:10 a.m. he entered the area, the visit/frisk area.

14 Q. All right, so that's the time he entered, right?

15 A. Yes, sir.

16 Q. I'm now going to page 2 of this logbook. Does this page
17 indicate the time that Alexander Hall came in for a frisk for
18 his visit?

19 A. Mm, it says 10:20 a.m.

20 Q. And who was right behind him?

21 A. Uh, Gianniti {sic}.

22 MR. MILLER: Thank you, Officer Blount.

23 THE COURT: Any redirect?

24 MR. TURKLE: Very, very briefly.

25 REDIRECT EXAMINATION

Blount - Redirect - Turkle

1 BY MR. TURKLE:

2 Q. Officer Blount, you just looked at a document that
3 reflected that Mr. Giannini and Inmate Hall had come into the
4 frisk area about 10:20 on October 3rd -- on September 3rd,
5 2017, correct?

6 A. Yes, sir.

7 Q. Was there any indication there as to what time their visit
8 ended?

9 A. No, there isn't.

10 MR. TURKLE: Thank you.

11 THE COURT: You may step down, Officer Blount.

12 THE WITNESS: Yes, ma'am.

13 (Witness excused)

14 THE COURT: Defendants may call their next witness.

15 MS. ACOSTA-PETTYJOHN: Our next witness is the
16 doctor, your Honor.

17 THE COURT: Oh.

18 MS. ACOSTA-PETTYJOHN: He's set to be here tomorrow
19 morning.

20 THE COURT: All right, you don't have any
21 housekeeping or anything you need to do?

22 MS. ACOSTA-PETTYJOHN: Not right now other than the
23 verdict sheet, your Honor.

24 THE COURT: Okay.

25 I know you'll be very disappointed to learn that

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1 we're going to have to break early today. Defendants are
2 calling one more witness who is a doctor, and to accommodate
3 the doctor's schedule, we've agreed that he didn't have to come
4 today and sit around, that he could come first thing tomorrow,
5 so I think what will happen tomorrow is we will hear the
6 Defendant's doctor at nine-thirty, if there is a rebuttal case
7 from Plaintiff it would be very brief, and then we're going to
8 go right into the closing arguments of the lawyers, and I'll be
9 giving you my instructions on the law, and I imagine the case
10 will be yours some time tomorrow.

11 We will stick to our usual hours of nine-thirty to
12 two-thirty unless you all agree that you want to come earlier
13 or stay later, so it may be that in reliance on nine-thirty to
14 two-thirty you've made arrangements and so you can't change
15 those hours, but if it got to be two-thirty tomorrow and you
16 thought you were close or if you wanted to come in earlier on
17 Friday and that was agreeable to everybody, you could adjust
18 the hours and we'll, we'll adjust to you, but only if that
19 works for everybody, and you certainly don't need to discuss it
20 now.

21 So, one more time, don't discuss the case, don't do
22 any outside research, keep an open mind, you still haven't
23 heard all of the evidence and you haven't heard my instructions
24 on the law or what the lawyers have to say. Have a good
25 evening and we will resume at nine-thirty tomorrow.

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1 (Open court; jury not present)

2 THE COURT: All right, my law clerk -- everyone can
3 sit.

4 My law clerk sent around yesterday the latest update
5 of the charge. It says "4/27/21 Draft" on the front. I made
6 some very non-substantive tweaks from the previous version that
7 you saw. The only things I wanted to draw your attention to is
8 that on page 17, we used to say...in terms of the excessive
9 force claim that one of the things the jury had to find was
10 that the Defendants struck the Plaintiff. I changed it to
11 'used force against the Plaintiff' because the testimony is
12 that Officer Bailey held the Plaintiff's head down and sort of
13 slammed him, not that he struck him. And I think everything
14 else was not non-substantive, but my law clerk sent you a red
15 line so you should have been able to see the changes.

16 At this point I think we are safe in striking, on
17 page 5, where I explain what stipulations are. It said "a
18 stipulation is simply an agreement between parties as to what
19 certain facts were or what the testimony would be if certain
20 people testified before you." I think we can strike the latter
21 part because we didn't have any of that. All right.

22 So any objections to the charge itself? We'll get to
23 the verdict form in a second.

24 MR. MILLER: Not from the Plaintiff, your Honor.

25 MS. ACOSTA-PETTYJOHN: No objections, your Honor.

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1 THE COURT: All right.

2 Now, I understand Defendants do have an objection to
3 the verdict form. Tell me about that.

4 MS. ACOSTA-PETTYJOHN: Your Honor, I think our
5 objection is more on the phrasing of the verdict form. We've
6 seen this form before where it says "has the Plaintiff met
7 their burden of proof against Defendant" so-and-so. I don't
8 know if the wording that it's in now will confuse the jury.

9 THE COURT: Well, I guess for the record I should
10 make it clear. It says "for each claim against each Defendant,
11 for whom do you find on Plaintiff's claim for excessive force
12 against Defendant Mathew Peralta, for whom do you find on
13 Plaintiff's claim for failure to intervene against Defendant
14 Blount."

15 I know I could build the burden of proof into that
16 question, but I don't know that I have to. What do you think
17 would be the source of confusion?

18 MS. ACOSTA-PETTYJOHN: For me, your Honor, it
19 reads -- and, again, I don't know if that's how the jury is
20 going to read it, but for me it reads kind of like...who do you
21 like better as opposed to who has the burden of proof.

22 THE COURT: Do you have an opinion, Mr. Miller?

23 MR. MILLER: I do. I respectfully disagree with Ms.
24 Acosta-Pettyjohn.

25 The charge makes it very clear who has the burden

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1 and what that burden is, and I find it unnecessary to remind
2 them in the verdict interrogatories. That, frankly, in my
3 opinion could be more confusing because it's sort of reminding
4 them or it's accentuating one aspect of a very long charge.

5 Basically what the verdict form states here is a very
6 simple question, and the questions assume the jury has listened
7 to the charge and can follow the instructions, so I find these
8 questions very clear and they clearly don't favor one side or
9 the other.

10 THE COURT: Yeah, I'm going to leave it as is.

11 I don't see the need to build the burden of proof into
12 the question any more than any other portion of the
13 instructions. If they're -- they'll have the instructions with
14 them in the jury room. If they have -- if they listen to them
15 and they follow them, there's no way they could answer the
16 question without applying the burden of proof, so asking them
17 'for whom do you find' is not in a vacuum, it's right after
18 they've been told the law they have to apply to make that
19 finding, so I'm going to leave it as it is.

20 Any other business we should take care of?

21 Actually, one thing is we've added some exhibits today
22 that need to be put on the thumb drive...

23 MR. MILLER: Yes.

24 THE COURT: And if there are going to be any tomorrow
25 that aren't already on the thumb drive, let's make sure that

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1 you folks take care of that tonight.

2 So I would imagine the doctor is not going to take
3 all morning. I don't know if there's going to be a rebuttal
4 case, but I imagine it will be brief, so be prepared to sum up
5 tomorrow morning.

6 Anything else we should discuss now?

7 MR. MILLER: No, your Honor, other than I am -- not
8 that this is the time to ask this, but I'm a little concerned
9 about what happened this morning and I'm not sure if there's
10 anything that I should be doing at this point. The fact that
11 the security staff in the building has been informed indicates
12 to me that maybe I don't need to do anything further, but I'm
13 certainly all ears if there's anything that the Court feels I
14 need to do at this point.

15 THE COURT: Look, I, I informed the marshals. I
16 don't know if they're pursuing it. I hope they are. Even if
17 they're not, that doesn't mean the U.S. Attorney would pursue
18 it.

19 I mean, I don't think there's anything you're obliged
20 to do. You're welcome to report the conduct to whoever you see
21 fit. I imagine whatever animosity exists between -- now I've
22 forgotten the gentleman's name. Mr. Zamara is it?

23 MR. MAGALIOS: Zamani.

24 THE COURT: Zamani. -- and Mr. Magalios preexisted
25 this trial...

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1 MR. MILLER: Yes, it did.

2 THE COURT: So I don't...you know, it's certainly up
3 to you whether you or your client feel like you need to take
4 any, any additional steps, but in terms of the part that is
5 arguably witness tampering, the marshals have been informed and
6 it's their call what to do after that.

7 MR. MILLER: Okay.

8 THE COURT: All right, I'll see everybody at
9 nine-thirty.

10 MR. MILLER: Thank you.

11 THE COURT: Have a good evening.

12 MS. ACOSTA-PETTYJOHN: Thank you, Your Honor.

13 MR. TURKLE: Thank you.
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GOVERNMENT EXHIBITS

Exhibit No.	Received
Plaintiff's 6A.331
Plaintiff's 15.421
Plaintiff's 16.421
Plaintiff's 17.484